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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 87

THE UNITED STATES OF AMERICA, APPELLANT

vs.

WOMEN'S SPORTSWEAR MANUFACTURERS ASSOCIATION, HYMAN CAGEN and NATHAN SWARTZ, ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

FILED MARCH 15, 1948

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 37

THE UNITED STATES OF AMERICA, APPELLANT

vs.

WOMEN'S SPORTSWEAR MANUFACTURERS ASSOCIATION, HYMAN CAGAN and NATHAN SWARTZ, ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

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1 In the District Court of the United States
District of Massachusetts

No. 4029, Civil Action

UNITED STATES OF AMERICA, PLAINTIFF

v.

WOMEN'S SPORTSWEAR MANUFACTURERS ASSOCIATION, ET AL., DEFENDANTS

2 *Complaint*

Filed July 23, 1945

To the Honorable Judges of the District Court of the United States for the District of Massachusetts:

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, complains and alleges upon information and belief:

I. JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted under Section IV of the Act of Congress of July 2, 1890, Chapter 647, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Act, against the defendants named herein, in order to prevent further violations by them, jointly and severally, as hereinafter alleged, of Section 1 of said Act (15 U. S. C. Sec. 1).

2. The alleged unlawful acts and violations hereinafter described, including the unlawful contracts, combination, and conspiracy in restraint of trade and commerce among the several States, have been, and now are conceived, carried out, and made effective in part within the District of Massachusetts, where all the defendants have usual

3 places of business and there transact business. All of the defendants reside in the District of Massachusetts and are within the jurisdiction of this Court for the purpose of service. The interstate trade and commerce in women's sportswear apparel, as hereinafter described, is carried on in part within said District.

II. DEFINITIONS

3. The term "women's sportswear" as used herein, shall mean seasonable garments worn by women, and consisting, among others, of slacks, shorts, jackets, and suits.

4. The term "contractor" as used herein, shall mean any firm, partnership, corporation, association or person engaged in maintaining a regular place of business where

sewing machines and other machinery are owned and operated for the purpose of stitching women's sportswear apparel.

5. The term "jobbers," sometimes called "manufacturers;" as used herein, shall mean any person, firm, partnership, corporation, or association engaged in the business of procuring the material for the manufacture of women's sportswear, the cutting, designing, and selling of women's sportswear.

6. The term "sportswear distributor" shall mean any person, firm, partnership, corporation or association engaged in the business of buying women's sportswear from jobbers and selling it at both wholesale and retail.

7. The term "mill" as used herein, shall mean any manufacturer of cloth used as material in the making of women's sportswear.

8. The term "Boston area" as used herein, means the area included within the limits of the City of Boston, Massachusetts, as well as the area within a radius of thirty miles of the City of Boston, Massachusetts.

III. Description of Defendants

9. Defendant, Women's Sportswear Manufacturers Association, sometimes hereinafter referred to as "the Association," is a voluntary unincorporated association composed of contractors in the Boston area who are engaged in the business of stitching women's sportswear apparel. It was organized in March of 1944, for the purpose of securing for its members the business of stitching women's sportswear apparel in the Boston area. Its principal place of business is located at Boston, Massachusetts.

10. Defendant Kay's Sportwear, Inc., is a corporation organized and existing under the laws of the State of Massachusetts, with principal place of business at Boston, Massachusetts. It is engaged in the business of stitching women's sportswear apparel. It is a member of defendant Association.

11. Defendant S. Mover & Son, Inc., is a corporation organized and existing under the laws of the State of Massachusetts with principal place of business at Boston, Massachusetts. It is engaged in the business of stitching women's sportswear apparel. It is a member of defendant Association.

12. Defendant Nathan Karger, a resident of Boston, Massachusetts, is president and treasurer of defendant Kay's Sportwear, Inc., and a member of the executive committee of defendant Association.

13. Defendant Samuel Mover, otherwise known as Sy Mover, a resident of Boston, Massachusetts, is treasurer of defendant S. Mover & Son, Inc., and a member of the executive committee of defendant Association.

14. Defendant Morris Isenberg of Boston, Massachusetts, is vice president of defendant Association.

15. Defendant Bernard D. Rosenberg, of Boston, Massachusetts, is executive director of defendant Association.

16. The following individuals, doing business under the trade names indicated, are all named as defendants herein. Each is a stitcher of women's sportswear apparel and each is a member of defendant Association:

(a) Max Herscowitz, of Boston, Massachusetts, doing business as M. & H. Sportswear Co. He is also president of defendant Association and a member of its executive committee;

(b) Hyman Cagan and Nathan Swartz, both of Boston, Massachusetts, doing business of Hynat Sportswear Co.;

(c) Morris Greenberg of Boston, Massachusetts, doing business as an individual;

(d) Barney M. Fisher of Boston, Massachusetts, doing business as Fisher Garment Co.;

(e) Harry Kaufman of Boston, Massachusetts, doing business as Paulkauf Co. He is also a member of the executive committee of defendant Association;

(f) Rocco Cerasulo of Medford, Massachusetts, doing business in Boston as Melody Sportswear Company;

(g) Benjamin Byer and Samuel Miller of Boston, Massachusetts, doing business as Miller and Byer;

(h) William R. Frederico and James Frederico, both of Medford, Massachusetts, doing business in Boston as V. & B. Sportswear Co. William R. Frederico is also secretary of defendant Association;

(i) Israel Rosenfield of Boston, Massachusetts, doing business at Cambridge, Massachusetts, as Central Manufacturing Garment Co.;

(j) Jacob Wienberg of Brockton, Massachusetts, doing business as Century Mfg. Co.;

(k) Joseph Keshen of Boston, Massachusetts, doing business as an individual;

(l) Hyman Medoff of Boston, Massachusetts, doing business as Medoff Sportswear Co.;

(m) Harry Fishman of Revere, Massachusetts, doing business in Boston as Harry Fishman Sportswear;

(n) Isaac Shapiro of Quincy, Massachusetts, and Henry Webber of Boston, Massachusetts, doing business in Boston as S. & W. Sportswear;

(o) Mary LaPorto of Brookline, Massachusetts, doing business in Boston as Mario Sportswear;

(p) Hyman Sherman of Brookline, Massachusetts, doing business in Boston as A. & S. Manufacturing Co.;

(q) Bella Kritchmar of Boston, Massachusetts, doing business as Bell Sportswear Mfg. Co.

17. Acts done by defendant Association or defendant corporations were authorized, ordered, and done by the officers, directors, agents, and employees of such Association and corporations, including natural persons named herein as defendants.

IV. Nature of Trade and Commerce Involved

18. Women's sportswear is manufactured chiefly in New York, New York; Boston, Massachusetts; Los Angeles, California; and Dallas, Texas. The business is divided among these areas substantially as follows: New York, 50 percent; Boston, 20 percent; Los Angeles, 20 percent; and Dallas, 10 percent. Total annual sales of women's sportswear in the United States approximate $200,000,000, of which approximately $40,000,000 is sold by manufacturers (jobbers) in the Boston area. The women's sportswear produced in the Boston area has acquired a national reputation as being the best in the industry. It is purchased by concerns catering to the best class of trade.

19. There are approximately forty-six jobbers located in the vicinity of Boston who take orders for the manufacture and sale of women's sportswear. In addition to places of manufacture, located in the Boston area, these jobbers maintain sales offices in New York where samples are displayed and orders are solicited from buyers representing department stores and ladies' garment stores throughout the United States. In addition, salesmen of these jobbers solicit orders throughout the United States. All orders are forwarded to the jobbers' places of manufacture in the Boston area where the garments are made.

20. Upon receipt of an order the jobber purchases the cloth from textile mills located primarily in the State of Maine, Pennsylvania, New York, Georgia, North Carolina, and Alabama. The cloth is shipped from the textile mill to the jobber's place of business in Boston where it is cut by him into the desired patterns. After cutting, he parts of the garment are stitched together by contractors with whom the jobbers make contracts for such work. Upon completion of the stitching the jobber ships the finished garments directly to the purchaser. Approximately 95 percent of the women's sportswear manufactured by jobbers in the Boston area is sold to purchasers in states other than the State of Massachusetts.

21. Prior to the conspiracy hereinafter alleged, jobbers in the Boston area did approximately 30 percent of their own stitching and the contractors hired by them did the remaining 70 percent of the stitching. The contractors maintain regular places of business in the Boston area where the garments are stitched either by machine or by hand.

7 The contractors hire for such work members of local unions which are affiliated with the International Ladies' Garment Workers' Union. The jobbers make contracts with the contractors for the stitching. The cost of stitching constitutes approximately one-third of the total cost of the completed garment.

22. At the time of filing this complaint there were approximately fifty stitchers in the Boston area. The nineteen largest stitchers are members of Women's Sportswear Manufacturers Association, and, along with the Association, have been named as defendants herein. These nineteen stitchers do approximately 70 percent of the stitching done by all contractors in the Boston area. Prior to the conspiracy hereinafter alleged, the jobbers made individual contracts with the stitchers. At the time of filing this Complaint the jobbers were required to make contracts with the Association, as will be alleged more particularly hereinafter. The Association then designates which of its member stitchers will do the work.

23. Women's sportswear is seasonal in nature and subject to frequent changes in style. A free and continuous flow of goods from the mills to the jobbers, and from the jobbers, through the stitchers, back to the jobbers, and thence to the purchasers, is essential.

V. Offenses Charged

24. Beginning in the month of March 1944, and continuing thereafter up to and including the date of filing this Complaint, the defendants have been and now are engaged in an unlawful combination and conspiracy to force all jobbers of women's sportswear located in the Boston area to contract exclusively with the Women's Sportswear Manufacturers Association and its members for their stitching requirements on women's sportswear garments manufactured by such jobbers, which contracts unreasonably restrain the hereinbefore described interstate trade and commerce, in violation of Section 1 of the Act of Congress of July 2, 1890, 26 Stat. 209, as amended, commonly known as the Sherman Act. Defendants threaten to continue such offenses and will continue them unless the relief hereinafter prayed for in this Complaint is granted.

25. The aforesaid combination and conspiracy to restrain trade and commerce has consisted of a contin-

uing agreement and concert of action among the defendants, the substantial terms of which have been that the defendants:

(a) agree to require all jobbers of women's sportswear apparel, located in the Boston area, to contract exclusively with the Association and its members for their stitching requirements, under threat of boycott or blacklisting;

(b) agree to prohibit any jobber from performing any stitching work on garments manufactured by such jobber, under threat of boycott or blacklisting;

(c) agree to boycott or blacklist any jobber performing stitching work for other jobbers;

(d) agree to prohibit any jobber from renewing a stitching contract with any contractor who is not a member of the Association, under threat of boycott or blacklisting;

(e) agree to force competing contractors to become members of the Association by prohibiting jobbers, under threat of boycott, from making any contracts with such competing contractors;

(f) agree to require all jobbers to sign a contract with the Association as a condition precedent to performance of any stitching work. A copy of such standard contract is attached hereto as "Exhibit A" and made a part of this Complaint;

(g) agree to make all individual contracts between jobbers and contractors subject to the terms of the contract between the jobbers and the Association described in subparagraph (f) of this paragraph 25;

(h) agree to eliminate all competition among themselves with respect to volume of business to be done by each, by requiring that each jobber distribute his stitching work among the particular members of the Association determined by defendants, in fixed percentages, regardless of the jobber's volume;

(i) agree to eliminate all price competition among themselves by refusing to permit any jobber to select the particular stitching contractor whose services are desired;

(j) agree to require jobbers to pay to the Association a fixed percentage of the moneys owed to contractor members, such funds to be used to enforce the terms set out in this paragraph 25.

VI. Effects of Conspiracy

26. The aforesaid concerted action of the defendants, pursuant to and in furtherance of the combination and conspiracy alleged in this Complaint, have had the effects, as intended by the defendants, of eliminating competition among themselves and with others, as to both price and volume of business done, in the stitching of women's sports-

wear manufactured by jobbers in the Boston area and sold throughout the United States; of forcing jobbers in the Boston area to deal exclusively with the Association and its members; of slowing down the manufacture and shipment in the Boston area of women's sportswear sold in interstate commerce; and of interrupting and diverting the normal and continuous flow of cloth and finished wearing apparel in interstate commerce. At the time of filing this Complaint the defendants had forced twenty-one of the forty-six women's sportswear jobbers in the Boston area to sign exclusive contracts with the defendant Association for their stitching requirements. These twenty-one jobbers provide more than 55 percent of the stitching required on all women's sportswear garments manufactured in the Boston area.

PRAYER

WHEREFORE, the Plaintiff prays:

1. That pursuant to Section 5 of the Sherman Act, a summons issue to each of the defendants commanding each defendant to appear herein and to answer the allegations contained in this Complaint and to abide by and perform such orders and decrees as the Court may make in the premises;

2. That upon final hearing of this cause, the Court order, adjudge and decree that the contracts, combination and conspiracy hereinabove described, constitute violations of Section 1 of the Sherman Act;

3. That the defendant, Women's Sportswear Manufacturers Association, and each of its defendant contractor members, be required to cancel the several agreements now in effect with the several jobbers under which the latter are required to designate the Association and its members as exclusive stitchers for women's sportswear manufactured by such jobbers, as well as to distribute their available business equally among such stitchers on terms imposed by such stitchers, and that the Association and each of its contractor members, their successors, transferees or assignees, be perpetually enjoined from making any new exclusive agreements, similar in nature, with any jobbers of women's sportswear in the Boston area;

4. That the Women's Sportswear Manufacturers Association be dissolved and that no new or other association be formed having the same purposes or objects;

5. That the contractor defendants and the members of the Women's Sportswear Manufacturers Association, and each of them, their committees, officers, directors, agents, employees, representatives, and all persons, associations

or corporations acting or claiming to act on behalf of them or any of them, be perpetually enjoined and restrained from engaging in any concerted plan or action calculated to secure to defendants, or any of them, their successors, transferees or assignees, the exclusive right to service the stitching requirements of any manufacturer or jobber in the Boston area engaged in the manufacture and sale in interstate commerce, of women's sportswear apparel or the materials thereof, or to impose any compulsory method of allocating among such stitchers the stitching requirements of such jobbers or manufacturers;

6. That the plaintiff have such further and other relief as the nature of the case may require and as the Court may deem necessary and proper in the premises;

7. That the plaintiff recover the costs of this suit.

EDMOND J. FORD,
RICHARD S. SULLIVAN,
Special Assistants to the Attorney General.

TOM C. CLARK,
Attorney General.
WENDELL BERGE,
Assistant Attorney General.
HOLMES BALDRIDGE,
Special Assistant to the Attorney General.

11 *Exhibit "A" to Complaint*

AGREEMENT made this 17th day of October 1944, by and between the WOMEN'S SPORTSWEAR MANUFACTURERS ASSOCIATION, of Boston, Massachusetts, hereinafter referred to as "ASSOCIATION" for and in behalf of itself and all its members and those who may hereafter become members, such member being hereinafter designated as "CONTRACTOR", and the individual jobbers whose signatures are hereto attached, each hereinafter designated as "JOBBER."

WHEREAS the members of the Association are engaged in furnishing labor for the manufacture of garments for the Jobber in the Boston area; and

WHEREAS the Association, Contractor, and Jobber are each in contractual relationship with the International Ladies' Garment Workers' Union, hereinafter called "I. L. G. W. U.", and have agreed with said I. L. G. W. U. to maintain certain labor standards, to pay certain standards of wages, and to assume certain obligations to the members of said I. L. G. W. U.; and

WHEREAS the parties hereto, in furtherance of their several obligations to said I. L. G. W. U., desire to establish

a basis of equitable and fair business conduct and dealing; to assist each other in the development of the Boston market; to minimize, as far as possible, all industrial disputes, conflicts, and difficulties; and to remove present abuses and evils which constitute causes of dispute and differences between Contractor and Jobber, and provide for a specific, inexpensive, and efficient means of settlement and determination of all such disputes,

NOW, THEREFORE, in consideration of the sum of one dollar to each other paid, the receipt of which is hereby acknowledged, and in consideration of the foregoing premises, it is agreed as follows:

(1) The Jobber, having already agreed with said I. L. G. W. U. to employ only contractors who are in contractual relationship with said I. L. G. W. U., agree to give all his work to members of the Association who are in good
12 standing with said I. L. G. W. U., so long as members of the Association are available for performance of his work, and are comparable as to price and quality of work with other Contractors who are in contractual relationship with said I. L. G. W. U. and are not members of the Association.

In the event that any Contractor hereunder ceases to be a member of the Association, the Jobber shall be notified by said Association of said fact by registered mail, but said Contractor is to be allowed to finish Jobber's work already in hand. Any Contractor who is in contractual relationship with said I. L. G. W. U. now employed by any Jobber may continue working for said Jobber even if not a member of the Association.

(2) The Association agrees to assist the Jobber in getting sufficient contractors as the amount of work of the Jobber may equitably require, and the Jobber agrees that in the distribution of his work he will divide such work as equally and equitably as possible among the Association Contractors engaged by him.

(3) The Contractor agrees to complete all orders given to him by the Jobber with due regard to the delivery dates set forth in the written orders, and not to do any work for any Jobber not in contractual relationship with the said I. L. G. W. U.

(4) The Jobber agrees to pay for all work performed by the Contractor within twenty-four hours of the presentation of the weekly statement.

All orders given by the Jobber to the Contractor shall be in writing, with the price to be billed the Jobber clearly set forth therein, and no secret rebates shall be given by any Contractor to any Jobber.

In the case of any secret rebates, the Association shall have the right to demand and receive from the Jobber the amount thereof.

(5) The Contractor and Jobber both agree that there shall be no pirating of styles submitted by any Jobber to a Contractor for manufacture in the Contractor's plant, and Contractor agrees that styles of one Jobber shall not be submitted to any other Jobber.

(6) The Association shall compute the amount due from the Contractor for unemployment insurance, old age
13 pension, and the three-tenths of one percent federal excise tax, vacation fund, and Labor Day fund and certify to the Contractor's Jobber the percentage to be deducted by the Jobber from the monies due the Contractor each week, and the Jobber agrees to forward the same weekly to Mr. Sol C. Hamburger, 260 Tremont Street, Boston, Massachusetts, who has been designated by the Association as the agency to receive the said deductions and to distribute the same for the account of the Contractor for the above purposes.

(7) Individual contracts between Contractor and Jobber shall be subject to the terms of this agreement, and Jobber recognizes Association as the agent for Contractor to represent Contractor in the settlement of any dispute which may arise either under this agreement or under any individual agreement between Contractor and Jobber.

(8) All disputes and grievances arising under the terms of individual contracts between Contractor and Jobber, and all disputes and grievances arising under the terms of this contract, which cannot be adjusted between the representative of the Association and the representative of Jobber, shall be referred to arbitration, as hereinafter provided.

(9) If any dispute between the Association and a Jobber or between any individual Contractor and a Jobber cannot be adjusted between the representative of the Association and the representative of the Jobber, the same shall be referred to Maxwell Copelof, of Orleans, Massachusetts, as arbitrator, who shall hear the parties as promptly as possible, and whose decision shall be final. If the said Copelof is unable for any reason to act, the parties agree that the arbitrator shall be named by the Conciliation Service of the United States Department of Labor. The expense of any arbitration shall be borne equally by the parties to the dispute.

(10) This agreement shall be construed as a separate agreement with each individual Jobber, and each individual Jobber shall be responsible to the Association solely for his own acts and observance hereof. It shall continue in force

for a period of one year from the date hereof and from year to year thereafter unless any party hereto notifies the opposite party in writing of its intention to terminate
14 the same as to him or it not less than thirty days prior to the first day of October in any year beginning with 1945.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, either individually or by their duly authorized representatives, the day and year first above written.

WOMEN'S SPORTSWEAR MANUFACTURERS ASSOCIATION,

By.....

Its President.

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15 *Summons and Return*

At the same term, on July 23, 1945, a summons was issued to defendants, and was returned, with service thereon, by the United States Marshal on August 10, 1945.

16 In the United States District Court

Answer and Disclaimer of the Defendant, Jacob Weinberg

Filed August 10, 1945

Now comes Jacob Wienberg, one of the defendants in the above entitled complaint and, for answer thereto, says that he is not doing business under the name and style of Century Manufacturing Company; that he has never committed or been a party to any of the unlawful acts and

violations described in the said Complaint; that he is not now and never has been a party to any agreement, contract, or understanding similar to that annexed to or described in the said Complaint and that he is not and has never been a party to the contract annexed to and described in the said Complaint.

And your defendant, Jacob Wienberg, further says that he severed every and all relationship with the business known as the Century Manufacturing Company on the twenty-eighth day of June, 1944, which date is prior to the acts and deeds complained of and that after the said twenty-eighth day of June, 1944, he had no interest in or connection with the said business.

Wherefore your defendant, Jacob Wienberg, disclaims any interest in the said proceedings and prays that this action may be discontinued as against him and that he may be allowed his costs.

JACOB WEINBERG.

18 In the United States District Court

Motion to Dismiss and Answer of Defendant, Harry Fishman d/b/a Harry Fishman Sportswear

Filed August 17, 1945

1. The defendant denies that the law mentioned in paragraph 1 of the Complaint has any application to any acts of the defendant.

2. The defendant admits that his place of business is within the jurisdiction of this court, but denies that he is engaged in interstate trade or commerce in women's sportswear apparel in this district or any district.

3 to 8. The defendant has no interest in the complainant's definitions as set forth in paragraphs 3, 4, 5, 6, 7 and 8 of the complaint inasmuch as these definitions are established by the complainant for its own purposes in construing the present complaint.

9. The defendant neither admits nor denies the allegations contained in paragraph 9, but leaves the complainant to prove the same inasmuch as the defendant is not a member of said association and has no definite knowledge of the complete history of the same.

10 to 15. The defendant has no interest in the allegations contained in paragraphs 10, 11, 12, 13, 14 and 15 of the Complaint.

16. The defendant admits the allegation contained in paragraph 16-M, but has no knowledge of the other sections of said paragraph and leaves the complainant to prove the same.

17. The defendant denies that any association or defendant corporations were authorized or ordered to do any act on his behalf.

18. The defendant has no knowledge of the allegation set forth in paragraph 18 and leaves the complainant to prove the same.

19. Inasmuch as the defendant works for only one jobber who is not in any way affiliated with the aforementioned association, the defendant has no knowledge of the facts set forth in said paragraph 19.

20. The defendant has no knowledge of how the jobber purchases cloth or conducts his business, but avers that he merely receives the cut garment and performs cer-
19 tain labor in his plant on such garments. The defendant further states that he has no knowledge of the percent of the women's sportswear manufactured by jobbers in the Boston area or where the same is sold.

21. The defendant has no knowledge of the facts set forth in paragraph 21 except the fact that jobbers do make contracts with contractors for stitching.

22. The defendant has no knowledge of the statistics set forth in paragraph 22.

23. The defendant admits the allegations contained in paragraph 23.

24. The defendant denies the allegations set forth in paragraph 24.

25. The defendant denies that he has committed any of the offences set forth in paragraph 25 which include any of the offences set forth in said paragraph and sections a to j inclusive.

26. The defendant denies the allegations set forth in paragraph 26.

WHEREFORE, defendant prays that the complaint against him be dismissed.

By his Attorney,

I. EDWARD NEWMAN,
31 State Street,
Boston, Mass.

21 In the United States District Court

Motion to Dismiss of Defendants, Bernard D. Rosenberg, et al.

Filed August 17, 1945

Now come the defendants, Bernard D. Rosenberg, Morris Isenberg, Kay's Sportwear, Inc., Nathan Karger, S. Mover & Son Inc. Samuel Mover, Hyman Cagan, Nathan Swartz, Morris Greenberg, Barney M. Fisher, Harry Kauf-

man, Rocco Cerasulo, Benjamin Byer, Samuel Miller, William R. Frederico, James Frederico, Israel Rosenfield, Joseph Keshen, Hyman Sherman, and Bella Kritchmar, and jointly and severally move the court, as follows:

(1) To dismiss the action because the complaint fails to state a claim against the defendants upon which relief can be granted;

(2) To dismiss the action because the complaint shows that the court lacks jurisdiction to grant any relief against the defendants;

(3) To dismiss the action because the allegations contained therein are vague and indefinite.

By their Attorney,

(Signed) HARRY BERGSON

23 In the United States District Court

Answer of Defendant, Hyman Sherman-d/b/a A. & S. Manufacturing Co.

Filed August 20, 1945

1. The defendant denies that the law mentioned in paragraph 1 of the Complaint has any application to any acts of the defendant.

2. The defendant admits that his place of business is within the jurisdiction of this court, but denies that he is engaged in interstate trade or commerce in women's sportswear apparel in this district or any district.

3 to 8. The defendant has no interest in the complainant's definitions as set forth in paragraphs 3, 4, 5, 6, 7 and 8 of the complaint inasmuch as these definitions are established by the complainant for its own purposes in construing the present complaint.

9. The defendant neither admits nor denies the allegations contained in paragraph 9, but leaves the complainant to prove the same inasmuch as the defendant is not a member of said association and has no definite knowledge of the complete history of the same.

10 to 15. The defendant has no interest in the allegations contained in paragraphs 10, 11, 12, 13, 14 and 15 of the Complaint.

16. The defendant admits the allegation contained in paragraph 16-p, but has no knowledge of the other sections of said paragraph and leaves the complainant to prove the same.

17. The defendant denies that any association or defendant corporations were authorized or ordered to do any act on his behalf.

18. The defendant has no knowledge of the allegation set forth in paragraph 18 and leaves the complaint to prove the same.

19. The defendant has no knowledge of the allegations set forth in paragraph 19 and leaves the complainant to prove the same.

20. The defendant has no knowledge of how the jobber purchases cloth or conducts his business. The defendant further states that he has no knowledge of the per-
24 cent of the women's sportswear manufactured by jobbers in the Boston Area or where the same is sold.

21. The defendant has no knowledge of the facts set forth in paragraph 21 except the fact that jobbers do make contracts with contractors for stitching.

22. The defendant has no knowledge of the statistics set forth in paragraph 22.

23. The defendant admits the allegations contained in paragraph 23.

24. The defendant denies the allegations set forth in paragraph 24.

25. The defendant denies that he has committed any of the offences set forth in paragraph 25 which include any of the offences set forth in said paragraph and sections a to j inclusive.

26. The defendant denies the allegations set forth in paragraph 26.

WHEREFORE, defendant prays that the complaint against him be dismissed.

By his Attorney,
ABRAHAM WASSERMAN,
31 State Street,
Boston, Mass.

26 In the United States District Court

Answer of Defendant, Hyman Medoff

Filed August 21, 1945

Now comes the defendant Hyman Medoff, of the City of Boston, County of Suffolk, Commonwealth of Massachusetts, in the above entitled action, and for answer to the plaintiff's complaint, says that in answer to

1. Paragraph numbered one, the defendant neither admits nor denies the allegations therein contained, but calls upon the plaintiff to prove the same.

2. Paragraph numbered two, the defendant neither admits nor denies the allegations therein contained, but calls upon the plaintiff to prove the same.

3. Paragraph numbered three, admitted.
4. Paragraph numbered four, admitted.
5. Paragraph numbered five, admitted.
6. Paragraph numbered six, admitted.
7. Paragraph numbered seven, admitted.
8. Paragraph numbered eight, admitted.
9. Paragraph numbered nine, the defendant neither admits nor denies the allegations therein contained, but calls upon the plaintiff to prove the same.
10. Paragraph numbered ten, the defendant neither admits nor denies the allegations therein contained, but calls upon the plaintiff to prove the same.
11. Paragraph numbered eleven, the defendant neither admits nor denies the allegations therein contained, but calls upon the plaintiff to prove the same.
12. Paragraph numbered twelve, the defendant neither admits nor denies the allegations therein contained, but calls upon the plaintiff to prove the same.
13. Paragraph numbered thirteen, the defendant neither admits nor denies the allegations therein contained, but call upon the plaintiff to prove the same.
14. Paragraph numbered fourteen, the defendant neither admits nor denies the allegations therein contained, but calls upon the plaintiff to prove the same.
27 15. Paragraph numbered fifteen, the defendant neither admits nor denies the allegations therein contained, but calls upon the plaintiff to prove the same.
16. Paragraph numbered sixteen, the defendant neither admits nor denies the allegations therein contained, with the exception of subdivision "1", and as to that subdivision, the defendant admits to that allegation, but denies that he is a member of the Women's Sportswear Manufacturers Association, and was not a member at the time of the service of the writ upon him.
17. Paragraph numbered seventeen, the defendant neither admits nor denies the allegations therein contained, but calls upon the plaintiff to prove the same.
18. Paragraph numbered eighteen, the defendant neither admits nor denies the allegations therein contained, but calls upon the plaintiff to prove the same.
19. Paragraph numbered nineteen, the defendant neither admits nor denies the allegations therein contained, but calls upon the plaintiff to prove the same.
20. Paragraph numbered twenty, the defendant neither admits nor denies the allegations therein contained, but calls upon the plaintiff to prove the same.

21. Paragraph numbered twenty-one, the defendant neither admits nor denies the allegations therein contained, but calls upon the plaintiff to prove the same.

22. Paragraph numbered twenty-two, the defendant neither admits nor denies the allegations therein contained, but calls upon the plaintiff to prove the same.

23. Paragraph numbered twenty-three, the defendant neither admits nor denies the allegations therein contained, but calls upon the plaintiff to prove the same.

24. Paragraph numbered twenty-four, the defendant specifically and in each instance denies each and every material allegation therein contained.

28 25. Paragraph numbered twenty-five, the defendant specifically and in each instance, denies each and every material allegation therein contained, including all its subdivisions.

26. Paragraph numbered twenty-six, the defendant specifically and in each instance, denies each and every material allegation therein cotainned.

Further answering, the defendant says that he is not and was not a member of the Women's Sportwear Manufacturers Association at the time of the service of the writ upon him.

By his Attorney,
MAURICE H. FINN.

The wifhin answer may be filed late.

EDMOND J. FORD.
Special Asst. to the Atty.-Gen.

30 In United States District Court

Answer of the Defendant, Max Herscowitz

Filed August 27, 1945

Now comes the defendant Max Herscowitz without waiving his motion to dismiss heretofore filed by him, and for answer to the Bill of Complaint alleges as follows:

(1) This defendant neither admits nor denies the allegations contained in paragraph one of the Bill of Complaint and calls upon the plaintiff to prove the same.

(2) This defendant denies the allegations contained in paragraph two of the Bill of Complaint.

Further answering paragraph two, this defendant says that he never combined or conspired with anyone to restrain trade and commerce.

(3) This defendant neither admits nor denies the allegations contained in paragraph three of the Bill of Complaint and calls upon the plaintiff to prove the same.

(4) This defendant neither admits nor denies the allegations contained in paragraph four of the Bill of Complaint and calls upon the plaintiff to prove the same.

(5) This defendant neither admits nor denies the allegations contained in paragraph five of the Bill of Complaint and calls upon the plaintiff to prove the same.

(6) This defendant neither admits nor denies the allegations contained in paragraph six of the Bill of Complaint and calls upon the plaintiff to prove the same.

(7) This defendant neither admits nor denies the allegations contained in paragraph seven of the Bill of Complaint and calls upon the plaintiff to prove the same.

(8) This defendant neither admits nor denies the allegations contained in paragraph eight of the Bill of Complaint and calls upon the plaintiff to prove the same.

(9) This defendant admits that the Women's Sportswear Manufacturers Association is a voluntary unincorporated association as alleged in paragraph nine of the Bill of Complaint but denies all other allegations contained in said paragraph.

31 (10) This defendant neither admits nor denies the allegations contained in paragraph ten of the Bill of Complaint and calls upon the plaintiff to prove the same.

(11) This defendant neither admits nor denies the allegations contained in paragraph eleven of the Bill of Complaint and calls upon the plaintiff to prove the same.

(12) This defendant neither admits nor denies the allegations contained in paragraph twelve of the Bill of Complaint and calls upon the plaintiff to prove the same.

(13) This defendant neither admits nor denies the allegations contained in paragraph thirteen of the Bill of Complaint and calls upon the plaintiff to prove the same.

(14) This defendant neither admits nor denies the allegations contained in paragraph fourteen of the Bill of Complaint and calls upon the plaintiff to prove the same.

(15) This defendant neither admits nor denies the allegations contained in paragraph fifteen of the Bill of Complaint and calls upon the plaintiff to prove the same.

(16) This defendant denies the allegations contained in paragraph sixteen, subdivision A of the Bill of Complaint.

As to all other allegations contained in said paragraph sixteen, the plaintiff neither admits nor denies the allegations contained therein and calls upon the plaintiff to prove the same.

(17) This defendant denies all the allegations contained in paragraph seventeen of the Bill of Complaint.

(18) This defendant neither admits nor denies the allegations contained in paragraph eighteen of the Bill of Complaint and calls upon the plaintiff to prove the same.

(19) This defendant neither admits nor denies the allegations contained in paragraph nineteen of the Bill of Complaint and calls upon the plaintiff to prove the same.

(20) This defendant neither admits nor denies the allegations contained in paragraph twenty of the Bill of Complaint and calls upon the plaintiff to prove the same.

32 (21) This defendant neither admits nor denies the allegations contained in paragraph twenty-one of the Bill of Complaint and calls upon the plaintiff to prove the same.

(22) This defendant neither admits nor denies the allegations contained in paragraph twenty-two of the Bill of Complaint and calls upon the plaintiff to prove the same.

(23) This defendant neither admits nor denies the allegations contained in paragraph twenty-three of the Bill of Complaint and calls upon the plaintiff to prove the same.

(24) This defendant denies all the allegations contained in paragraph twenty-four of the Bill of Complaint, and particularly denies that he was engaged in unlawful combination and conspiracy as alleged in said paragraph.

(25) Answering the allegations contained in paragraph twenty-five of the Bill of Complaint, this defendant says that the agreement referred to in subdivision F of said paragraph does not contain the terms set out in said paragraph.

(26) This defendant denies all allegations contained in paragraph twenty-six of the Bill of Complaint.

(27) Further answering the Bill of Complaint, this defendant says that since April of 1945 he ceased to be a member of the Women's Sportswear Manufacturers Association, and since that time he held no office whatsoever in the said association. That in joining the said association he believed that he was joining an organization for the mutual benefit of its members, and to enable him to carry out his agreement with the International Ladies Garment Workers Union.

Wherefore he prays that the Bill of Complaint be dismissed as against him, and that he be awarded his cost.

By his attorney,

LOUIS G. STONE.

This may be filed late.

EDMUND J. FORD,
Acting for the United States.

34 In United States District Court

Motion to Dismiss of Defendant, Max Herscowitz

Filed August 27, 1945

Now comes the defendant Max Herscowitz and prays that the Bill of Complaint be dismissed, and as grounds for such dismissal, alleges the following:

(a) That the Bill of Complaint does not set out any overt acts either on the part of the association or of any of the alleged members of the association that comes within the purview of the act of Congress, commonly known as the Sherman Act.

(b) That the agreement referred to "as exhibit A" in paragraph 25, subdivision F of the Bill of Complaint, does not contain the alleged conspiracy set out in said paragraph 25 and in any subdivisions thereof.

By his attorney,
LOUIS G. STONE.

This may be filed late.
EDMOND J. FORD,
Acting for the United States.

36 In United States District Court

Motion of Defendant, Harry Fishman, for Leave to Amend His Answer

Filed August 2, 1946

And now comes the defendant, Harry Fishman, in the above entitled action and moves that he be allowed to amend his answer by adding after paragraph 26, the following:

27. The defendant says that the complaint shows that the court lacks jurisdiction over the subject matter.

28. The defendant says that the complaint fails to state a claim against the defendant, Harry Fishman, upon which relief can be granted.

By his attorney,
I. EDWARD NEWMAN,
31 State Street,
Boston, Massachusetts

Assented to:
GRANT W. KELLEHER.

37 In United States District Court

Minute Entry—Sept. 10, 1946

The cause was then continued from term to term to the September term, 1946, when on September 10, 1946, the cause came on for hearing before the court, the Honorable

George C. Sweeney, District Judge, sitting on motions to dismiss filed by defendants, Max Herscowitz, Bernard D. Rosenberg, *et al.*, and Harry Fishman, and after a full hearing, was taken under advisement.

On the same day, the court handed down its memorandum denying the motions to dismiss.

39 In United States District Court

Answer of the Defendant, Women's Sportswear Manufacturers Association

Filed September 23, 1946

Now comes the defendant Women's Sportswear Manufacturers Association and makes this answer to the complaint herein:

1. It admits the allegations contained in paragraph one of the complaint.

2. As to paragraph two of the complaint, it admits that it has an usual place of business, transacts business, and that all the defendants reside in the District of Massachusetts, and are within the jurisdiction of this Court for the purpose of service. It is ignorant as to the allegations relating to interstate trade and commerce in women's sportswear apparel, as described in the complaint as being carried on in part within said District, which allegations it neither admits nor denies, but calls upon the plaintiff to prove the same insofar as it may be material, and denies all the other allegations in said paragraph two of the complaint.

3. No answer is required by the defendant as to paragraphs three, four, five, six, seven, and eight of the complaint.

4. As to paragraph nine of the complaint, it admits that the Women's Sportswear Manufacturers Association is a voluntary unincorporated association composed of contractors in the Boston area, and that its principal place of business is located in Boston, Massachusetts. It denies all the other allegations in said paragraph nine of the complaint.

40 5. It admits the allegations of paragraphs ten, eleven, twelve, and thirteen of the complaint.

6. It denies the allegations in paragraph fourteen of the complaint.

7. It admits the allegations in paragraph fifteen of the complaint.

8. As to paragraph sixteen of the complaint, the defendant denies the allegations in sub-paragraphs (a), (h),

(i), (j), (l), (m), (n), and (o); it admits the allegations in sub-paragraphs (b), (c), (d), (e), (f), (g), (k), (p), and (q).

9. The defendant denies all the allegations of paragraph seventeen of the complaint.

10. The defendant says that it is ignorant as to the allegations of paragraph eighteen of the complaint and, therefore, neither admits nor denies the same, but calls upon the plaintiff to prove the same insofar as it may be material.

11. The defendant says that it is ignorant as to the allegations of paragraph nineteen of the complaint and, therefore, neither admits nor denies the same, but calls upon the plaintiff to prove the same insofar as it may be material.

12. As to paragraph twenty of the complaint, it admits that after cutting, the parts of the garment are stitched together by the contractors with whom the jobbers make contracts for such work. As to all the other allegations in said paragraph, it is ignorant as to the same and, therefore, neither admits nor denies the same and calls upon the plaintiff to prove the same insofar as it may be material.

13. As to paragraph twenty-one, the defendant admits that the contractors maintain regular places of business in the Boston area where garments are stitched by machine or by hand, that they hire for such work members of local unions which are affiliated with the International
41 Ladies' Garment Workers Union, and that the jobbers make contracts for the stitching. As to all the other allegations of said paragraph twenty-one, the defendant says that it is ignorant as to the same and, therefore, neither admits nor denies the same but calls upon the plaintiff to prove the same insofar as they may be material.

14. As to paragraph twenty-two of the complaint, the defendant says that it is ignorant as to the allegations as to the number of stitchers in the Boston area and that the nineteen stitchers therein mentioned do approximately seventy per cent of the stitching done by all contractors in the Boston area, which allegations it neither affirms nor denies, but calls upon the plaintiff to prove the same insofar as it may be material. It admits that the jobbers make individual contracts with the stitchers and that some of the defendants are members of the Women's Sportswear Association; it denies all the other allegations of said paragraph of the complaint.

15. As to paragraph twenty-three of the complaint, the defendant says that it is ignorant as to the allegations therein contained and, therefore, neither admits nor denies

the same, but calls upon the plaintiff to prove the same insofar as it may be material.

16. It denies the allegations of paragraph twenty-four of the complaint.

17. It admits the copy of the contract attached to the bill of complaint is Exhibit A as alleged in said paragraph twenty-five of the complaint; it denies all the other allegations of said paragraph twenty-five not specifically admitted.

18. It denies the allegations of paragraph twenty-six of the bill of complaint.

WHEREFORE, the defendant prays that the said bill of complaint be dismissed as against it.

By its Attorney,

HARRY BERGSON.

42 In United States District Court

Answer of the Defendants, Bernard D. Rosenberg, et al.

Filed September 23, 1946

Now comes the defendants, Bernard D. Rosenberg, Morris Isenberg, Kay's Sportwear, Inc., Nathan Karger, S. Mover & Son Inc., Samuel Mover, Hyman Cagan, Nathan Swartz, Morris Greenberg, Barney M. Fisher, Harry Kaufman, Rocco Cerasulo, Benjamin Byer, Samuel Miller, William R. Frederico, James Frederico, Israel Rosenfield, Joseph Kesheh, Hyman Sherman, and Bella Kritchmar, and jointly and severally make answer to the bill of complaint herein:

1. They admit the allegations contained in paragraph one of the complaint.

2. As to paragraph two of the complaint, they admit that they have usual places of business, transact business, and reside in the District of Massachusetts, and are within the jurisdiction of this Court for the purpose of service. They are ignorant as to the allegations relating to interstate trade and commerce in women's sportswear apparel, as described in the complaint as being carried on in part within said District, which allegations they neither admit nor deny, but call upon the plaintiff to prove the same insofar as it may be material, and deny all the other allegations in said paragraph two of the complaint.

3. No answer is required by the defendants as to paragraphs three, four, five, six, seven, and eight of the complaint.

43 4. As to paragraph nine of the complaint, they admit that the Women's Sportswear Manufacturers

Association is a voluntary unincorporated association composed of contractors in the Boston area, and that its principal place of business is located in Boston, Massachusetts. They deny all the other allegations in said paragraph 9 of the complaint.

5. They admit the allegations of paragraph ten of the complaint.

6. They admit the allegations of paragraphs eleven, twelve, and thirteen of the complaint.

7. They deny the allegations in paragraph fourteen of the complaint.

8. They admit the allegations in paragraph fifteen of the complaint.

9. As to paragraph sixteen of the complaint, the defendants deny the allegations in sub-paragraphs (a), (h), (i), (j), (l); (m), (n) and (o); they admit the allegations in sub-paragraphs (b), (c), (d), (e), (f), (g), (k), (p), and (q).

10. The defendants deny all the allegations of paragraph seventeen of the complaint.

11. The defendants say that they are ignorant as to the allegations of paragraph eighteen of the complaint and, therefore, neither admit nor deny the same, but call upon the plaintiff to prove the same insofar as it may be material.

12. The defendants say that they are ignorant as to the allegations of paragraph nineteen of the complaint and, therefore, neither admit nor deny the same, but call upon the plaintiff to prove the same insofar as it may be material.

13. As to paragraph twenty of the complaint, they admit that after cutting, the parts of the garment are stitched together by the contractors with whom the jobbers
44 make contracts for such work. As to all the other allegations in said paragraph, they are ignorant as to the same and, therefore, neither admit nor deny the same and call upon the plaintiff to prove the same insofar as they may be material.

14. As to paragraph twenty-one, the defendants admit that they maintain regular places of business in the Boston area where garments are stitched by machine or by hand, that they hire for such work members of local unions which are affiliated with the International Ladies' Garment Workers Union, and that the jobbers make contracts for the stitching. As to all the other allegations of said paragraph twenty-one, the defendants say that they are ignorant as to the same and, therefore, neither admit nor deny the same but call upon the plaintiff to prove the same insofar as they may be material.

15. As to paragraph twenty-two of the complaint, the defendants say that they are ignorant as to the allegations as to the number of stitchers in the Boston area and that the nineteen stitchers therein mentioned do approximately seventy per cent of the stitching done by all contractors in the Boston area, which allegations they neither affirm nor deny, but call upon the plaintiff to prove the same insofar as it may be material. They admit that the jobbers make individual contracts with the stitchers and that these defendants are members of the Women's Sportswear Association; they deny all the other allegations of said paragraph of the complaint.

16. As to paragraph twenty-three of the complaint, the defendants say that they are ignorant as to the allegations therein contained and, therefore, neither admit nor deny the same, but call upon the plaintiff to prove the same insofar as it may be material.

17. They deny the allegations of paragraph twenty-four of the complaint.

18. They admit the copy of the contract attached to the bill of complaint is Exhibit A as alleged in said paragraph twenty-five of the complaint; they deny all the other allegations of said paragraph twenty-five not specifically admitted.

19. They deny the allegations of paragraph twenty-six of the bill of complaint.

Wherefore, the defendants pray that the said bill of complaint be dismissed as against them.

By their Attorney,

Harry Bergson.

46 In United States District Court

Minute Entries

The cause was then continued to the December Term, 1946, when on February 13, 1947, the cause came on for trial before the court, the Honorable Arthur D. Healey, District Judge, sitting, and was fully tried on that day and on February 14 and February 28, 1947, to which days the trial had been adjourned, and was then taken under advisement.

The cause was then continued from term to term to the present December Term, 1947, when on December 10, 1947, the court hands down its opinion denying the plaintiff's prayers for an injunction and other relief, and ordering judgment for the defendants.

On the same day, the following judgment is entered in accordance with the opinion of the court:

47 In United States District Court

Judgment

December 10, 1947.

HEALEY, J. In accordance with the opinion handed down this day by the court in the above entitled action, it is ORDERED

Judgment for the defendants without costs.

By the Court?

EDITH G. ROLLINS,
Deputy Clerk.

Entered December 10, 1947.
ARTHUR D. HEALEY,
U. S. District Judge.

48 *Petition for Appeal and Allowance Thereof*

From the foregoing judgment, entered on December 10, 1947, the United States of America, plaintiff, files a petition for appeal, which petition on the same day was allowed by the Court, the Honorable Arthur D. Healey, District Judge, sitting.

49 In United States District Court

Memorandum

September 10, 1946

SWEENEY, J. There are before me several motions to dismiss filed by various defendants, all addressed to the same point; namely, that the complaint fails to assert an action cognizable at law. I find no merit to the defendants' contentions. The bill plainly alleges violation of Section 1 of the Sherman Anti-Trust Act. Accordingly, the motions to dismiss are denied.

50 In United States District Court

Opinion

December 10, 1947

HEALEY, J. This complaint was filed under Section 4 of the Sherman Anti-Trust Act (15 USC 4), against the defendants to prevent further alleged violations by them, jointly or severally, of Section 1 of the Act (15 USC 1).

The defendant, Women's Sportswear Manufacturers Association, hereinafter referred to as the "Association", is described as a voluntary unincorporated association composed of contractors in the Boston area who are engaged in the business of stitching women's sportswear apparel. The other defendants are firms, partnerships, corporations,

associations or individuals, engaged as contractors in the business of stitching women's sportswear apparel, that are alleged to be members of the defendant Association, or officers or agents of the defendant Association.

It is alleged in the complaint that "acts done by defendant Association or defendant corporations were authorized, ordered and done by the officers, directors, agents and employees of such Association and corporations, including natural persons herein named as defendants."

51 After setting forth the nature of the trade and commerce involved, the complaint charges that the defendants have violated the Sherman Act as follows:

> "24. Beginning in the month of March, 1944, and continuing thereafter up to and including the date of filing this complaint, the defendants have been and now are engaged in an unlawful combination and conspiracy to force all jobbers of women's sportswear located in the Boston Area to contract exclusively with the Women's Sportswear Manufacturers Association and its members for their stitching requirements on women's sportswear garments manufactured by such jobbers, which contracts unreasonably restrain the hereinbefore described interstate trade and commerce, in violation of Section 1 of the Act of Congress of July 2, 1890, 26 Stat. 209, as amended, commonly known as the Sherman Act. Defendants threaten to continue such offenses and will continue them unless the relief hereinafter prayed for in this complaint is granted."

The alleged terms of the conspiracy and combination are set forth in paragraph 25 of the complaint, and the alleged effects thereof are set forth in paragraph 26.

The complaint concludes with prayers for injunctions as follows:

1. That upon final hearing of this cause, the court order, adjudge and decree that the contracts, combination and conspiracy hereinabove described, constitute violations of Section 1 of the Sherman Act;
2. That the defendant, Women's Sportswear Manufacturers Association, and each of its defendant contractor members, be required to cancel the several agreements now in effect with the several jobbers under which the latter are required to designate the Association and its members as exclusive stitchers for women's sportswear manufactured by such jobbers, as well as to distribute their available business equally

among such stitchers on terms imposed by such stitchers, and that the Association and each of its contractor members, their successors, transferees or assignees, be perpetually enjoined from making any new exclusive agreements, similar in nature, with any jobbers of women's sportswear in the Boston area;

3. That the Women's Sportswear Manufacturers Association be dissolved and that no new or other association be formed having the same purposes or objects;
4. That the contractor defendants and the members of the Women's Sportswear Manufacturers Association, and each of them, their committees, officers, directors, agents, employees, representatives, and all persons, associations or corporations acting or claiming to act on behalf of them or any of them, be perpetually enjoined and restrained from engaging in any concerted plan or action calculated to secure to defendants, or any of them, their successors, transferees or assignees, the exclusive right to service the stitching requirements of any manufacturer or jobber in the Boston area engaged in the manufacture and sale in interstate commerce, of women's sportswear apparel or the materials thereof, or to impose any compulsory method of allocating among such stitchers the stitching requirements of such jobbers or manufacturers;
5. That the plaintiff have such further and other relief as the nature of the case may require and as the court may deem necessary and proper in the premises.

and a prayer for costs.

Findings of Fact

Women's Sportswear consists generally of jackets, skirts, slacks, shorts, blouses and jumper dresses made from wool, rayon and cotton fabrics. It is produced by jobbers who employ contractors to do the stitching and put on the necessary ornaments. The jobbers maintain places of business in Boston and vicinity. They all maintain sales offices in New York City. Some of them also
53 maintain sales offices in other cities, and practically all of them employ salesmen who travel throughout the United States soliciting orders for women's sportswear.

At their places of business in Boston and vicinity, the jobbers cut the cloth or piece goods according to patterns designed by them, in accordance with the orders of their customers. They make their purchases of cloth through New York sales offices of the cloth-producing mills. These mills are located in various places outside of Massachusetts,

as well as in Massachusetts. About 80% of the cloth used by the jobbers in the production of women's sportswear is manufactured in mills located outside of Massachusetts. At times, the cloth purchased is sent to the jobber's place of business directly from the mill; at other times, it is sent to the jobber from the mill agent in New York. Although a jobber may at times maintain an inventory of cloth, very few did so during the period covered by this complaint. Most of the cloth was purchased as a result of specific orders taken by the jobbers for sportswear.

As a general rule, a jobber employed outside of his sales force, only a designer, a pattern maker, one or more cutters, shipping clerks and office help. The defendant contractors have shops or factories in the Boston area, where they have installed sewing machines. The contractors do at least 50% of all the stitching of women's sportswear produced in the Boston area.

It is the custom in the trade for the contractor to return the finished garments to the jobber, who immediately sends them to the purchaser. Since the jobbers manufacture sportswear only on orders, they do not stock finished garments.

54 Boston is the fifth largest manufacturing center of women's sportswear in the United States, figured on the basis of the number of persons employed in that industry, being surpassed by Los Angeles, New York, Chicago and Philadelphia respectively. Women's sportswear manufactured in the Boston area is sold throughout the country in competition with like goods manufactured in the other areas. At least 65% of all the women's sportswear produced in Boston is handled by the defendants, and at least 80% of all the finished garments produced here is sold to purchasers located outside of Massachusetts. The annual gross value of the garments sold by the jobbers who signed the agreement with the defendant Association is about $8,800,000. The cost of stitching women's sportswear garments amounts to approximately 25% of the sales price of the garments.

The defendant Women's Sportswear Manufacturers Association, was organized at some time prior to December 1, 1943. It is an unincorporated association with a place of business in Boston, Massachusetts, composed of contractors who contract to perform the stitching operations on women's sportswear. All of the defendant contractors named in the complaint as being members of the defendant Association, with the exception of Hyman Medoff, were members of the defendant Association at

some time during the period from March 1, 1944, to the date of the filing of the complaint. The defendants named in the complaint as officers or members of the executive committee of the defendant Association held their alleged positions at some time during the period from March 1, 1944, to the date of the filing of this complaint. The Association held meetings at the call of its secretary, who
55 kept the minutes of the meetings. The defendant Rosenberg was the Executive Director of the defendant Association throughout the entire period covered by this complaint.

Beginning about March 1, 1944, the defendant Rosenberg notified certain jobbers that, in order for the contractors to operate their shops for said jobbers in the future, it would be necessary to establish equitable and fair business dealings to remove abuses and evils which caused conflict and disputes between jobber and contractor, and that they must get in contact with him. This was done for the purpose of having the jobbers sign an agreement with the contractors concerning these matters.

A proposed written agreement, (Plaintiff's Exhibit 3), required the jobber to employ only members of the defendant Association, to refrain from dealing with non-member contractors, to distribute his work equitably among the Association contractors engaged by him, to furnish the contractor with written orders setting out the price for the work, to refrain from accepting secret rebates, and to pay to the contractor the amount of the unemployment compensation insurance, health and vacation fund and labor Day pay attributable to the services of the contractors' employees.

Despite the urging of defendant Rosenberg and members of the Association, the jobbers had not signed any agreement with the Association up to September 25, 1944. On that date, Rosenberg, by letter to a representative of the jobbers, threatened a stoppage of production by the Association and its member contractors on October 2, 1944, if the matter were not adjusted by September 30, 1944. Shortly thereafter, a conference was held between representatives of the jobbers and representatives of the
56 defendant contractors to consider the proposed agreement. At that meeting, a representative of the jobbers pointed out their objections to the proposed agreement, and informed the contractors' representatives that the jobbers had obtained an opinion that the proposed agreement was illegal. The jobbers refused to sign the proposed agreement at that time.

On October 2, 1944, work was stopped in the shops of contractors who were doing work for jobbers, known as Kenniston Klassics, Banner Sportswear and College-Town Sportswear. The aforementioned jobbers were informed by their contractors that the reason for the work stoppage was their refusal to sign the proposed agreement with the defendant Association. These jobbers then obtained a restraining order in the state court and thereafter work on their goods was resumed by the contractors.

Although there was testimony that the representatives of the International Ladies' Garment Workers' Union had ordered a work stoppage by some of its members on goods of some of the jobbers in September of 1944, it appears that the stoppage in the above-mentioned plants were ordered by the defendant Association because the owners of the jobber establishments refused to sign the agreement submitted to them by the defendant Association. The defendant contractors are independent contractors who are not members of or qualified for membership in the Internal Ladies' Garment Workers' Union. There is no evidence that said Union participated in drawing up the proposed agreement between the jobbers and contractors.

Shortly after the restraining order was issued by the state court, further negotiations between the Association and the jobbers took place. As a result of these
57 negotiations, the proposed agreement was revised, and, as so revised, was signed by 21 jobbers on October 17, 1944. (Plaintiff's Exhibit 4).

The signed agreement required, *inter alia*, that the jobber should give all of his work to Association contractors available for performance of his work, provided such contractor was comparable as to price and quality of work with non-member contractors, but if a member withdrew from the Association, he could finish the jobber's work already in hand; or, if any non-member contractor was, at the time of the signing of the Association's agreement, employed by a jobber under contract, the jobber could continue to employ such contractor, even if he did not become an Association member. The jobber was required to distribute his work equitably among Association contractors engaged by him and to furnish the contractor with a written order setting out the price, and was forbidden to receive secret rebates from the contractor. The jobber was required to deduct from the amount due the contractor, a sum computed by the defendant Association to cover unemployment compensation, insurance and the health and vacation fund of the contractors' employees. Compulsory

arbitration of disputes between jobber and contractor was provided for, as were the mechanics for arbitration. All individual agreements between jobber and contractor were made subject to the provisions of this agreement. Other provisions required the Association to assist the jobber in getting sufficient contractors to do his work. The contractor agreed to complete all orders given him with due regard to the delivery dates set forth in the orders; and both the contractors and jobbers agreed that there should be no pirating of styles, and that styles submitted to a contractor by a jobber would not be submitted by the contractor to any other jobber.

This agreement was still in force at the time this complaint was filed. There is little, if any, substantial
58 evidence as to just how the arrangement worked out.

One of the purposes of the Association was to maintain the standard of prices charged the jobbers for doing the stitching operations on the sportswear garments in the Boston area.

None of the defendant contractors performed any work on goods in a shop or establishment outside of Massachusetts. They did not receive any goods to be worked on from, nor did they deliver any completed sportswear garments to, any jobber or anyone else outside of Massachusetts.

None of the defendants attempted to fix wholesale or retail prices of women's sportswear or to boycott any concern or interfere with the manufacture or sale of its goods outside of Massachusetts.

Discussion.

The Sherman Act does not condemn every contract, combination or conspiracy which may in some degree interfere with interstate commerce. *Apex Hosiery Company v. Leader, et al.*, 310 U. S. 469, 486. Only those activities which are shown to be intentional restraints on commerce, or those which have such a direct and immediate effect upon commerce as to enable the court to draw an inference that they were intended to restrain commerce, are prescribed by the Act. Or, as stated in *United Leather Workers v. Herkert*, 265 U. S. 457, 471, a case, like the instant one, involving an interference with manufacturing," • • • It is only when the intent or necessary effect upon such commerce in the article is to enable those preventing the manufacture to monopolize the supply, control its price or discriminate as between its would-be purchasers, that the unlawful interference with its manufacture can be said directly to burden interstate commerce."

There is no direct evidence that these defendants had any intention of restraining interstate commerce in cloth or in the finished sportswear garments. Unless, therefore, by their activities they actually or potentially monopolized the supply of these articles, controlled its price, or discriminated between would-be purchasers, they cannot be held to have so directly and immediately restrained commerce as to permit an inference of illegal intent.

It is to be noted that all the activities and operations of the defendants were confined exclusively to Massachusetts. None of the defendant contractors carried on any business in any other state or worked for any jobbers outside of Massachusetts. They neither received from, nor sent any goods to anyone outside of Massachusetts. Also, none of the defendants attempted to fix any wholesale or retail prices for women's sportswear or to boycott any concern or its goods outside of Massachusetts.

However, the mere fact that the defendants were not themselves engaged in interstate commerce, would not exculpate their activities from the condemnation of the Act, if such activities constituted an unreasonable restraint on interstate commerce. *Boyle v. United States*, 40 F (2d) 49.

Unquestionably the prices charged by these contractors for stitching sportswear garments, are reflected in the wholesale and retail prices of the finished garments. Also, any work stoppage on the jobbers' goods would slow down the stream of sportswear entering into interstate commerce and the purchase of cloth from out of state mills, as well as the taking of orders for finished garments in other states. However, in my opinion, such results do not constitute sufficiently direct and immediate effects upon interstate commerce upon which to predicate an inference of illegal intent.

It has been held that interference with the manufacture of a product within a state, which completed product, to the knowledge of the alleged conspirators, was to be shipped in interstate commerce to fill orders already received and accepted from the Company's customers in other states, is not, without more, a direct and immediate restraint on interstate commerce within the scope of the Sherman Act, but, rather, it has merely an incidental indirect and remote effect upon such commerce. *Apex Hosiery Co. v. Leader, et al.*, 310 U. S. 469; *United Mine Workers, et al. v. Coronado Coal Company, et al.*, 268 U. S. 295; *United Leather Workers v. Her-*

kert, 265 U. S. 457; *Industrial Association v. United States*, 268 U. S. 64.

It has also been decided that the fact that the raw materials used in the manufacture of a product have been purchased in another state and shipped interstate to the manufacturer, does not, of itself, render a contract or conspiracy prohibiting its manufacture into a finished product a direct and immediate restraint on interstate commerce. *Apex Hosiery Company v. Leader, et al.*, 310 U. S. 469; *Levering & Garrigues Company, et al. v. Morrin, et al.*, 289 U. S. 103; *Industrial Association v. United States*, 268 U. S. 64.

Counsel for the government argue in their brief, however, that the instant case is one where there is a direct and immediate restraint upon "a stream of commerce" within the purview of the Act. They allege that the taking of orders in other states, the purchase of cloth in other states in pursuance of those orders, the manufacture of garments to fill the orders from cloth purchased in interstate commerce, and the shipment of the finished garments to the out-of-town purchasers, constitutes a flow or stream of commerce which the defendants directly and immediately restrained by their activities within Massachusetts.

In support of this argument, they cite the case of *Swift & Company v. United States*, 196 U. S. 375, and several cases decided under the National Labor Relations Act. While it is true that in the *Swift* case the court referred to the trade in cattle and meat as a stream of commerce, they also found that the purpose of the conspiracy was to directly and immediately restrain interstate commerce for the purpose of price fixing. Had the court been unable to make such a finding, it seems reasonable to believe that a different result would have been reached. *Swift & Company v. United States*, 196 U. S. 375, 397, 398;
61 *Anderson v. United States*, 171 U. S. 604; *Hopkins v. United States*, 171 U. S. 578.

That the term, "affect commerce", used in the National Labor Relations Act, and the decisions construing it, does not expand the meaning of "restraint of commerce" as used in the Sherman Act, was decided in *Leader, et al. v. Apex Hosiery Company*, 108 F. (2d) 71, which decision was affirmed in *Apex Hosiery Company v. Leader, et al.*, 310 U. S. 469. See also *Blankenship v. Kurfman*, 96 F. (2d) 450, 456. Therefore, cases like *National Labor Relations Board v. Jones & Laughlin Steel Corporation*, 301 U. S. 1, and *National Labor Relations Board v. Fainblatt*, 306 U. S. 601, interpreting the Wagner Act, are not in point on this question.

In summary, there is no evidence of any intent on the part of the defendants, who had no direct and immediate connection with or control over interstate commerce, to burden interstate commerce. There was no evidence of any direct and immediate restraint upon interstate commerce resulting from the defendants' activities, from which an illegal intent can be inferred. They did not seek to monopolize the supply of sportswear garments, or to control its price, or to discriminate between would-be purchasers. Their activities were purely local and directly affected only the manufacture of women's sportswear in Massachusetts. The effect of their activities on interstate commerce was indirect and too remote to bring them within the condemnation of Section 1 of the Sherman Act.

Conclusion of Law

On the basis of the above findings of fact, I conclude that none of the defendants committed any violations of the Sherman Act as alleged in the complaint.

The plaintiff's prayers for an injunction and other relief should be denied.

The Clerk will prepare an order for judgment for the defendants.

62 In United States District Court

Reporter's transcript of hearing

APPEARANCES

Grant W. Kelleher, Esq., Special Assistant to the Attorney General, by James M. Malloy, Esq., and W. D. Kilgore, Esq., Special Attorneys, for the Government.

Harry Bergson, Esq., and Harry Bergson, Jr., Esq., for the Defendants.

Court Room No. 2, Federal Bldg.,
Boston, Thursday, Feb. 13, 1947,
10 a. m.

63 The Court. Call the case, Mr. Clerk.

The Clerk. Civil Action No. 4029, United States of America against Women's Sportswear Manufacturers Association, *Et Al.*

The Court. Are both parties ready?

Mr. Malloy. Ready, your Honor.

Mr. Bergson. Ready.

The Court. All right.

Opening Statement by James M. Malloy, Esq.

May it please the Court, the complaint in this case was filed under the authority granted by Section 4 of the Sher-

man Act. It charges the defendants with combining and conspiring to compel manufacturers in the women's sportswear industry in Boston to deal exclusively with the members of the defendant Women's Sportswear Manufacturing Association. Named as defendants are the Association, four of its officers and nineteen of its members. The members are known in the industry as "contractors". Their place in the trade I shall briefly describe in a moment.

Three of the defendants, Mary Laporto, doing business as Mario Sportswear, Israel Shapiro and Henry Webber, doing business as S. & W. Sportswear, have not filed
64 answers. The Government does not make any application with respect to those defendants at this time. The remaining defendants have all filed answers in which they deny the allegations of the complaint.

65 The COURT. If I may interrupt, I understand as to one defendant the case has been dismissed.

Mr. MALLOY. As to Jacob Weinberg, a suggestion of his death was noted and the Court upon motion of the Government dismissed as to him.

Women's Sportswear consists generally of slacks, shirts, jackets and suits. The sportswear produced in Boston is usually made out of wool cloth. The manufacturer in the industry is commonly called a jobber. The jobbers involved in this case maintain their factories or plants or principal places of business in Boston. In addition they have sales offices in New York City and employ salesmen who travel throughout the United States soliciting orders.

The business is a highly seasonal business, subject to frequent style changes, so that under normal conditions the jobbers do not maintain inventories either of cloth or of finished sportswear.

Accordingly, when a jobber receives an order, he must purchase the cloth to fill it. To do that he contacts agents of the cloth producing mills. The mills are located in such states as Maine, New Hampshire, Massachusetts, New York, Pennsylvania, Alabama, Georgia and other states, but the mills usually have sales agents established in New York offices.

When such a sales agent receives an order from a
66 jobber he communicates with his factory and usually has the cloth required sent to him in New York. He then trans-ships it to the jobber's Boston factory. When the jobber receives it he has it cut up by his employees according to the required pattern.

Now, normally a jobber does not stitch his own garments. For that purpose he relies upon those, such as the defendants in this case, who are known in the trade as "contrac-

fors". He then sends the cut cloth to the contractors for stitching and for application of buttons and ornaments.

The defendant contractors in this case own or lease factory space in Boston. They own or lease sewing machines and they employ stitchers. Most, if not all of the stitchers employed by the defendant contractors are affiliated with the International Ladies' Garment Workers' Union.

After the contractor has received the cloth from the jobber—

The COURT. May I interrupt further? You say most if not all are affiliated or at least employees of the contractors who are affiliated with the International Ladies' Garment Workers.

Mr. MALLOY. That is, employees of all the contractors.

The COURT. That is true of all these defendants, is it not?

Mr. MALLOY. I believe so, sir.

The COURT. All right.

67 Mr. MALLOY. The contractor has his employee stitch the garments and apply ornaments and buttons to them and then return the finished garment to the jobber. The jobber immediately ships the finished sportswear to the purchaser.

About 90 per cent of the finished sportswear produced by the jobbers involved in this case is sold outside of the Commonwealth of Massachusetts. The defendant, Women's Sportswear Manufacturers Association, was organized some time prior to March 1, 1944. At about that time, however, the Association and its members embarked upon a campaign designed to compel the Boston jobbers to agree to deal exclusively with members of the Association. The approximate date of the beginning of that campaign will be established by two letters written by the defendant, Bernard D. Rosenberg, who is the executive director of the Association.

However, this concerted plan was not carried out through correspondence but through personal calls made by Mr. Rosenberg and Association members on jobbers. The jobbers were given copies of the agreement which the Association demanded that they sign. We shall produce such a copy.

However, the jobbers were unwilling to enter into the proposed agreement and the negotiations and conferences continued into the month of September, 1944. At that time the Association threatened that unless the agreement were signed work would be stopped by the contractors for
68 the jobbers.

Now, the jobbers in this area along with other cloth manufacturers are associated together in an

organization known as the Wholesale Garment Association. Its executive director is Mr. Laurence Richmond. His jobber members brought to Mr. Richmond's attention the fact that Mr. Rosenberg and the defendant contractors were attempting to negotiate this agreement, that a work stoppage had been threatened unless it were signed, so on September 23rd Mr. Richmond wrote to Mr. Rosenberg and asked him to hold up the proposed work stoppage until Mr. Richmond had had an opportunity to confer with his members to see if the matter could be amicably adjusted.

Mr. Rosenberg replied by letter that his committee was unwilling to defer a work stoppage, but that as a courtesy to Mr. Richmond it would not be held up. But after the exchange of letters and before September 30th conferences were held between Mr. Rosenberg and Mr. Richmond and the members of their respective associations. Mr. Rosenberg handed to Mr. Richmond a draft of the proposed agreement. The Government will offer that draft.

Its preamble recited that its purpose was to promote the welfare of the industry, but was silent as to any union relations among the parties. The provisions of that agreement required the jobber to give his work to members of
the defendant Association exclusively and to re-
69 frain from dealing with non-members, to distribute his work equitably among the defendant contractors engaged by him, to furnish written orders to the contractor setting out the price to be billed, to abstain from accepting secret rebates, and to pay to the contractor payments formerly borne by the contractor for unemployment compensation insurance and for the help and vacation fund of the International Ladies' Garment Workers' Union.

At these conferences the Association representatives repeated the assertions in Mr. Rosenberg's letter that unless the agreement were signed work would be stopped by the contractors. Mr. Richmond voiced his objections to the proposed agreement to Mr. Rosenberg. He pointed out that the requirement that the jobbers should bear the expenses formerly borne by the contractors as to help and vacation fund and unemployment compensation insurance would increase the cost of the garment and would violate OPA regulations. He also pointed out to Mr. Rosenberg that he had legal advice that the proposed agreement was in violation of the anti-trust law. The jobbers therefore refused to sign the agreement. Accordingly on October 2nd—

The COURT. What year?

Mr. MALLOY.—1944, the contractors stopped work on garments of three jobbers which they then had.

When the contractors were questioned as to the
70 reason for the work stoppage they replied that it was because the agreement had not been signed.

Some litigation in the State Court followed. Then further negotiations and conferences were held. The agreement was revised, and to restore peace in the industry twenty-one of the jobbers signed the revised agreement.

The revised agreement did not obligate the jobber to pay the funds due for help and vacation and the unemployment compensation insurance, but did require him to deduct an amount computed by the Association to cover those payments and to pay that amount to a nominee of the Association.

71 The signed agreement likewise required the parties to arbitrate all matters in dispute and provided the mechanics. Like the rejected draft, the signed agreement required the jobbers to give all contracts to members of the Association so long as they were comparable as to price and quality with non-members and to distribute certain equitable benefits to contractors engaged in the trade. The agreement made all individual agreements between contracts subject to its terms. In addition, the Government will likewise produce some of the minutes of meetings of the Association which will show the type of activities carried on and the interpretation of the signed agreements.

Mr. Richmond.

The Court. Just a moment before you call witnesses. Mr. Bergson, do I understand that you represent all defendants with the exception of the three who did not file answers and one, of course, as to whom the proceedings have been dismissed.

Mr. Bergson. I think that is correct.

Laurence H. Richmond, Sworn.

Direct Examination by Mr. Malloy.

Q. Your full name, please, Mr. Richmond
A. Laurence H. Richmond.
Q. Where do you live?
A. 47 Manemet Road, Newton Center.
72 Q. What is your position?
A. I am executive director of the Garment Association.
Q. What is the full name of that Association?
A. Wholesale Garment Association.
Q. How long have you held that position?
The Court. Wholesale Garment Association?
The Witness. Garment, G-a-r-m-e-n-t.

The COURT. All right. What is that?

The WITNESS. It is a trade association.

The COURT. A trade association.

Q. What types of business are your members engaged in, Mr. Richmond?

A. They are manufacturers and wholesalers of women's apparel, children's apparel.

Q. Are any of your members engaged in the manufacture of women's sportswear?

A. Yes, sir.

Q. And are those men so engaged sometimes known in the trade as "jobbers"?

A. Why, yes, sir.

Q. Will you tell us how long you have been in the business?

A. Approximately ten years.

The COURT. You mean you have held that position for ten years?

The WITNESS. Yes, sir—no, sir. I have held this position about six years. Before that I worked under another gentleman.

The COURT. Your question was confined as to how
73 long he had been engaged in this position?

Q. First, how long have you been executive director of the Association?

A. Six years.

Q. What was your position prior to that?

A. I was assistant to the executive director.

Q. Briefly, Mr. Richmond, what are your duties?

A. My duties are to interest—My particular duties are to supervise the Association and interest ourselves in any matters pertaining to the welfare of the manufacturers.

Q. Do you know the defendant Bernard R. Rosenberg?

A. Yes, sir.

Q. Do you know the organization he is connected with?

A. Yes, sir.

Q. What is that organization?

A. I know two of them.

Q. Will you state what they are?

A. Women's Sportswear Manufacturers Association, and I think the name of the other one is the Massachusetts Dress Association.

Q. Did you have any contact with Mr. Rosenberg in September, 1944?

A. Yes, sir.

Q. Did you write a letter to Mr. Rosenberg about that time?

A. I did.

Q. I show you what purports to be a letter addressed to Mr. Rosenberg, dated September 23, 1944, and I will ask you if that is a letter written by you?

A. It is.

Q. Did you have that letter mailed in the usual course of business to Mr. Rosenberg?

A. Yes, sir.

Mr. MALLOY. I offer that letter in evidence.

74 Mr. BERGSON. [After perusing.] May I ask for what purpose you are offering this letter at this time?

The COURT. I can't hear a word, Mr. Bergson.

Mr. BERGSON. I am asking for what purpose Mr. Malloy is offering this letter at this time.

The COURT. You may state that, Mr. Malloy.

Mr. MALLOY. I am offering this to show it was brought to the defendant Rosenberg's attention that the jobbers had been told that a work stoppage was threatened and that Rosenberg was asked to await action. It is part of the chain of events leading up to the signing of the agreement which is set out in the complaint filed.

The COURT. All right. You object to the letter?

Mr. BERGSON. I do.

The COURT. Admitted. That may be marked as Plaintiff's Exhibit 1.

[Letter, September 23, 1944, from Richmond to Rosenberg, marked Plaintiff's Exhibit 1.]

You may, Mr. Bergson, for the record, state the reasons for your objection so it will be in the record.

Mr. BERGSON. If I may have the letter. [Handed Exhibit 1.] This letter, if your Honor please, is addressed to Mr. Bernard D. Rosenberg, Executive Director of the defendant Association.

The COURT. Before you proceed, Mr. Malloy, may 75 I ask if that is the original or a photostat?

Mr. MALLOY. That is the original.

The COURT. I think I have it included here in a group of letters and other documents which you asked to have prepared.

Mr. MALLOY. Yes, is it, your Honor.

The COURT. All right, you may proceed, Mr. Bergson.

Mr. BERGSON. As I stated, this letter is addressed to Mr. Rosenberg, Executive Director of the defendant Associa-

tion, and covers two matters, one of which directly bears upon the fact that it has come to the attention of the witness that the Association is conferring with individual members with a view to having the labor contract signed. Now, then follows the sentence in which he says, "It has also been called to my attention that a general stoppage of contractors has been set for Monday." There is nothing in that letter that in any way ties it up with any action which has been complained of; in other words, he is simply stating that it has come to his attention. I don't see that that in any way is an effort that is tied up with this Association to have a labor contract signed with the members that Mr. Rosenberg represents.

Mr. MALLOY. I might say that the Government proposes to tie it up with the activities of the defendant Association.

76 The COURT. All right. I admit it, and your objections are noted.

Mr. MALLOY. This is Plaintiff's Exhibit 1, and I desire to read it. It is on the stationery of the Wholesale Garment Association—

The COURT. It won't be necessary to read it. I have a copy of it.

Mr. MALLOY. You have a copy, your Honor?

The COURT. Yes,—unless you want to read it into the record.

Q. Mr. Richmond, I hand you what purports to be a letter from Bernard D. Rosenberg to you, dated September 25, 1944, and I will ask you if you received that letter?

A. [After perusing.] Yes, sir.

Mr. MALLOY. I offer it in evidence.

The COURT. Let Mr. Bergson see it.

[Said letter handed to and perused by Mr. Bergson.]

The COURT. Do you object to that, sir?

Mr. BERGSON. No, sir.

The COURT. All right, it may be admitted and marked as Plaintiff's Exhibit 2.

[Letter, September 25, 1944, Rosenberg to Richmond, marked Plaintiff's Exhibit 2.]

Mr. MALLOY. I would like to read that, your Honor.

The COURT. All right. You may read both of

77 them if you wish.

Mr. MALLOY. No. Plaintiff's Exhibit 2 is on the stationery of the Women's Sportswear Manufacturers Association, dated September 25, 1944, and is addressed to Mr. Lawrence H. Richmond, Executive Director, Wholesale Garment Association, 75 Kneeland Street, Boston, Mass.:

"My dear Mr. Richmond:

In reply to your letter of September 23rd, 1944, let me state that at a committee meeting held today, the general opinion was not to postpone the original plans of stopping production for the account of the jobbers immediately.

It was only as a courtesy to you that I prevailed on my committee to wait.

However, I hope and trust that the matter can and will be adjusted by Saturday, September 30, 1944, otherwise production will be stopped Monday morning, October 2, 1944.

Anticipating that you will be able to bring about an amicable and peaceful solution to this problem, I am,

Very truly yours,

WOMEN'S SPORTSWEAR MANUFACTURERS ASS'N.

By BERNARD D. ROSENBERG
Executive Director."

Q. After you received that letter, Mr. Richmond,
78 did you have any conferences with Mr. Rosenberg?

A. Yes, sir.

Q. Did Mr. Rosenberg hand you a draft of the proposed agreement?

A. Yes, sir.

Mr. BERGSON. I do not object to the question but it is leading.

The COURT. Perhaps he should fix the time.

Mr. BERGSON. Yes.

Q. Between the exchange of letters and September 30, 1944, at conferences between you and Mr. Rosenberg—

The COURT. Wait just a moment. As I understand, one letter was received on September 23 and the reply was dated September 25, 1944. Now the question is between the exchange of letters. Do you mean that letter?

Q. Between September 25, 1944 and September 30, 1944, did Mr. Rosenberg hand you a draft of a proposed agreement?

A. I don't remember the exact date, whether it was between September 25 and September 30. This is a couple of years ago and my memory isn't too good on that. All I remember of the letters of Mr. Rosenberg, I could pretty well state the date approximately, and the statement that I would make—

The COURT. You can state from memory now. Have you any memory of the time approximately—

The WITNESS. Yes, it was approximately between—

The COURT. Wait a minute until I finish. Do you re-

call the date when the contract was proffered to you
79 by Mr. Rosenberg?

The WITNESS. Approximately September 30.

80 Q. Mr. Richmond, I hand you a four-page typewritten document, I will ask you if you recognize that.

A. Yes, sir.

Q. What is that document?

A. This was the document that Mr. Rosenberg gave to me.

Mr. MALLOY. I desire to offer it in evidence. [Showing the document to Mr. Bergson, who examines it and returns it.]

Mr. BERGSON. I object.

The COURT. Let me have your reasons for objection.

Mr. BERGSON. My objection to it is that this agreement is merely a step in a proposal that ultimately led up to a signed agreement. In other words, this agreement never was executed, it was simply a step in negotiations that finally resulted in a final agreement.

The COURT. May I see it first? [Examining the document.]

Mr. MALLOY. If the Court pleases, I could explain the reason of the Government's offer. Mr. Bergson is misinterpreting the theory of the Government's case. This is not a suit on a signed contract that cannot be varied by parol evidence. The defendants are charged with a conspiracy alleged to be formed March 1, 1944. The basic conspiracy was to compel jobbers to deal exclusively with members of the Defendant Association.

Now, the Courts recognize that a conspiracy is seldom capable of direct proof. Therefore the courts permit the showing of overt acts and things done by the defendants to disclose what their conspiracy really was.

81 Now, what did the defendants do in this case? They took that agreement around to jobbers and asked them to sign it. What did that agreement provide? Does that provide, as the Government charges—

The COURT. Just a moment. [To the witness] Were you asked to sign this particular agreement?

The WITNESS. Yes, sir.

The COURT. This particular agreement, you were asked to sign? All right. Continue.

Mr. MALLOY. Therefore that is an overt act which explains what the basic conspiracy was about. It matters not that any agreement was ever signed by anyone. The agreement or conspiracy is complete with the showing of the conspiracy. It is not necessary that the conspiracy be even partially successful.

The COURT. Had you completed your statement?

Mr. MALLOY. Yes, sir.

The COURT. You may reply if you want to.

Mr. BERGSON. I want to call the Court's attention to the opening statement made by Mr. Malloy, and that is that this is a case where the defendants organized to set up standards under which they would conduct their business, and that they were dealing with an association on the other hand represented by this witness, Mr. Richmond. Now, where you have a situation where two organizations are trying to arrive at an agreement, as is the situation
82 here, and as it has been outlined by Mr. Malloy, it does not seem to me that you have got the same case as where these defendants are engaged in a conspiracy to attempt to control, monopolize, or to do anything inimical to interstate commerce. You have got here open negotiations between two bodies, one a body of the manufacturers on the one side, and the other the contractors on the other side.

The COURT. I am going to admit this document, and that may be marked.

Mr. BERGSON. Note my objection.

The COURT. You have stated your objection and the reasons for it.

[Agreement between Women's Sportswear Manufacturers Association and Jobbers, marked Plaintiff's Exhibit 3.]

Mr. MALLOY. Now I should like to read one or two paragraphs from that document. I will read Paragraph 2 from Government's Exhibit 3:

> "The jobber shall employ or continue to employ only such contractor or contractors who are members of the Association, and the jobber further agrees not to employ or in any way deal with such contractor or contractors who are not members of the Association."

Paragraph 2(b) reads:

> "The jobber in the distribution of orders for the manufacturer of garments shall divide same as equally and equitably as possible among the contractors engaged by him and that of his own present existing
83 shop, if such shop is in existence at the time of the signing of this agreement."

I would also like to point out that Paragraphs 6 and 7 provide that the jobber shall pay the unemployment compensation insurance and the health and vacation fund of the International Ladies Garment Workers Union to the contractor.

Q. Mr. Richmond, at these conferences between you and Mr. Rosenberg were any of the other members of the Women's Sportswear Manufacturers Association present?

A. There was a committee present.

Q. Do you recall the names of any of the members of that committee?

The COURT. I think you ought to try to fix a time if you can when these conferences took place.

Q. When about did these conferences take place?

A. Within the week that was permitted by Mr. Rosenberg.

The COURT. That is, the week from September 25th?

The WITNESS. That is right.

The COURT. 19—

The WITNESS. '44; yes, sir.

The COURT. All right.

Q. Who appeared with Mr. Rosenberg for his Association at such conferences?

A. Mr. Mover.

The COURT. M-o-v-e-r?

The WITNESS. M-o-v-e-r. The gentleman next to him, I think it was Mr. Keshen.

The COURT. How do you spell that?

84 The WITNESS. I don't know. K-e-s-h-e-n, I would say.

Q. Do you recall any others?

A. Mr. Kaufman.

Q. Were any of the members of the Wholesale Garment Association present at such conferences?

A. Yes, sir.

The COURT. You mean by that, his organization?

Q. Your association?

The COURT. Some others were present?

The WITNESS. Yes, sir.

Q. Who were they?

The COURT. Who were they?

A. Well, Mr. Kaplan, Mr. Cohen,—

Q. Which Mr. Cohen was that?

A. Louis Cohen.

Q. Mr. Richmond, at those conferences—

Mr. BERGSON. Has he finished?

The COURT. How many conferences were there?

The WITNESS. There was one meeting, to the best of my memory, in committee.

Q. One committee meeting?

A. Yes; during that particular week in my office.

The COURT. In your office where?

The WITNESS. 75 Kneeland Street, Boston.

The COURT. That is the office of the Wholesale Garment Association?

The WITNESS. That is right.

The COURT. There was a meeting of these persons you have enumerated?

85 The WITNESS. That is right.

Q. At that conference were any statements made by anyone on behalf of the Women's Sportswear Manufacturers Association as to what would happen if the proposed agreement Government's Exhibit 3 was not signed?

Mr. BERGSON. I pray your Honor's judgment.

The COURT. Of course that is a leading question. We are trying this case without a jury. In order to shorten it, the Court will permit the questions, of course if they are permissible, and if they are relevant to the matter that we are hearing. I am going to admit the question.

Mr. BERGSON. Bearing in mind at all times that the questions are leading?

The COURT. Yes. I say it is a leading question. I presume that is why you object. I called your attention that the case was being tried without a jury, and if they are relevant the Court will admit them.

86 Q. Do you remember the question, Mr. Richmond?

A. Yes, sir.

Q. What is the answer?

A. We were told that there was going to be a stoppage.

Q. Who made that statement?

A. Some member of the Women's Sportswear Manufacturers Association, I don't remember which one.

The COURT. Without characterizing it can you say what the language was?

Mr. BERGSON. Who said it?

The COURT. Who said it? Let us have the conversation if you can.

The WITNESS. Yes, I think I can. We were told that the Women's Sportswear—

The COURT. No. Who told you?

The WITNESS. Mr. Rosenberg.

The COURT. Mr. Rosenberg is speaking. What did he say?

The WITNESS. He wanted recognition for the Women's Sportswear Manufacturers Association, and that unless we saw fit to sign this particular agreement that he was afraid there would have to be a stoppage.

Q. Did you state to Mr. Rosenberg what your views of this agreement were?

A. Yes, I did.

Q. What did you tell him?

A. I told him that we had already been to the Office of Price Administration and found that it wasn't right to increase the price of the garment, and consequently we had

conferred with an attorney who had said that it was
87 anti-trust; and that, thirdly, I had been over to see the U. S. Attorney together with our attorney, Mr. Ford, who had stated that he would like to get an opinion from Washington on it.

Q. Now, was this agreement, Government's Exhibit No. 3, signed by the jobbers?

A. No, sir.

Q. What happened next?

A. The stoppage took place in three plants in the industry.

Q. What plants?

A. The Kenniston Klassics.

The Court. That is spelled with a "K" or "C"?

The Witness. "K". Banner Sportswear and College-Town Sportswear.

The Court. When did these stoppages take place, approximately?

The Witness. At the time Mr. Rosenberg said they would take place, beginning of October.

Q. What did you do?

A. Communicated with the attorney who had been giving us advice on it and he advised an injunction.

Q. Were any further negotiations held in October in respect to an agreement?

A. Yes, sir.

Q. Will you describe those conferences and what took place?

Mr. Bergson. Fix the date.

The Court. October, 1944.

The Witness. October, 1944.

Mr. Bergson. What time in October?

The Court. About what time?

The Witness. We are talking about new conferences now?

88 The Court. Yes. These conferences as I understand it took place after the stoppages.

The Witness. I see. Well, after the injunction was secured the contractors went back to work again. On approximately October 7th or 8th, around that neighborhood, Mr. Kramer of the International Ladies Garment came to see me.

Q. Did you have any further conferences with Mr. Rosenberg or any members of his Association?

A. With Mr. Rosenberg and Mr. Kramer.

Q. What did you do with respect to an agreement, if anything?

A. Mr. Kramer asked if there wasn't some way in which we could get together because he felt it was a much easier job on the part of the union to handle a group of people rather than to handle an individual, and he said he would like to see the contractors association have some recognition, and I said we didn't mind recognizing the contractors as an association provided we were not asked to sign anything that wasn't right.

Q. Anything further done about an agreement?

A. Mr. Rosenberg and Mr. Kramer arranged to meet at Mr. Bergson's office, and they had a small committee and I had a very small committee present, and together we drew up an instrument.

Q. I hand you a four-page typewritten document and ask you if you recognize that?

A. Yes, sir.

The COURT. Let me see it.

[Document handed to the Court.]

Q. What is that document I have handed you, Mr. Richmond?

89 Mr. BERGSON. I suppose the document speaks for itself.

The COURT. Yes.

Mr. MALLOY. Before I offer it I am asking what it is, so that I can make an intelligent offer.

The COURT. As I understand this agreement was drawn up at a meeting in which a committee representing the Women's Sportswear Manufacturers Association and your group were present?

The WITNESS. Yes, sir, that is right.

The COURT. And this agreement is it?

The WITNESS. Yes, sir, it is.

The COURT. All right.

Mr. MALLOY. I offer it in evidence.

The COURT. All right. No objection?

Mr. BERGSON. No objection.

The COURT. It may be marked.

[Agreement, October 17, 1944, between Women's Sportswear Manufacturers Association and individual jobbers is marked Plaintiff's Exhibit 4.]

Q. First, I direct your attention to pages 4 and 5 of this agreement, Government's Exhibit 4, and ask you if the signatories of that agreement are members of your association?

A. Yes, sir.

The COURT. All of the signatories are members of the Wholesale Garment Association?

The WITNESS. All of them. That is right.

Q. I just wish to call your attention to one signature, Mr. Richmond, and that is the Lucky Maid Sportswear.

90 Do you recognize that as the signature of Mr. Lou Swartz?

A. No, sir.

Q. What signature is that?

A. It says Lou Swartz. I am not familiar with the signature.

The Court. You say you don't know whether it is that signature?

The Witness. No, sir.

Q. You are not familiar with it?

A. No.

Q. Mr. Richmond, on what basis are dues paid by the members of your Association?

Mr. Bergson. Is that material?

The Court. I don't know whether it is or not.

Mr. Malloy. I am trying to bring out from the witness the gross business done by the signatories to that agreement.

The Court. All right.

A. They are paid on the basis of volume of business.

Q. You testified there were twenty-one signatories of the members of your Association?

A. Yes, sir.

Q. They paid dues to your association?

A. Yes, sir.

Q. Can you state approximately what would be the gross annual business done by those twenty-one signatories on the basis of the dues payment to your association?

Mr. Bergson. I object.

The Court. I don't think your question is exclusive enough.

Mr. Malloy. Your Honor, they pay dues based on proceeds.

The Court. That is true. Is that the only business these people were engaged in?

91 Q. Do you know enough about the business of the twenty-one signatories to know whether they are engaged in other types of business?

A. What do you mean, other types?

Q. Other than the manufacture of women's sportswear?

A. You mean they might be in the real estate business?

Q. No. I am talking of clothing manufacture. They wouldn't pay dues to you based on anything other than the manufacture of clothing?

A. No, sir.

Q. Do those twenty-one signatories to Government's Exhibit 4 deal in sportswear exclusively?

A. Yes, sir.

The COURT. All right.

Q. Can you state approximately what would be their gross annual business?

Mr. BERGSON. I still object.

The COURT. What is your objection?

Mr. BERGSON. I don't think it is competent for the purposes of this case just simply to prove what is the gross volume of business done by these twenty-one men.

The COURT. The Government has made certain allegations as to the volume of business that is done in this particular line of business by the signatories to this agreement or contract.

Mr. BERGSON. Further, I think the Government has stated—we have certain allegations as to the total volume of business in sportswear done here in Boston and there is not any evidence that these twenty-one men are the
92 ones who do all the business here in Boston.

Mr. MALLOY. I am coming to that.

The COURT. Your objection will be noted. I am going to allow this witness to answer the question.

Mr. BERGSON. Well, I don't think it follows that this witness is the competent one to testify as to the volume of that business because it is merely based upon the paying of dues that are paid.

The COURT. He is the executive director of this organization and he says that dues are fixed in accordance with the volume of business done by the contractors.

Mr. BERGSON. Yes, but it doesn't follow that these members have paid him the dues in accordance with the volume of business. In other words, there is not any evidence that there has been any check as to the volume of business done by these various members, to be certain that they have paid the dues.

The COURT. I am going to permit him to ask a question. All right; you may answer that.

A. After all that I can just tell you it is a mere estimation. The witnesses are here and I think they can well testify as to what business they did. Most of these people are paying the proper amount of dues in the association. That means they are doing over $300,000 a year business. How much more than $300,000 is merely a guess on my part.

The COURT. In other words that is the minimum amount.

The WITNESS. That is right.

93 The COURT. And that is fixed on a $300,000 gross business?

The WITNESS. Gross business.

The COURT. So if a person is doing $600,000, he would still only pay dues payable on a $300,000 business?

The WITNESS. That is right.

The COURT. So you would be unable, unless you had other means, to state the approximate amount of business that these twenty-one members did?

The WITNESS. Yes.

The COURT. It seems to me it wouldn't be a very good test.

Mr. MALLOY. It is his testimony, as I understand, your Honor, that these people do a minimum business of $300,000.

The COURT. All twenty-one do a minimum business of $300,000?

The WITNESS. Sixteen of them between one hundred and fifty and three hundred thousand.

Q. Mr. Richmond, in 1944 how many jobbers were there in the sportswear industry in Boston, do you know?

A. Approximately fifty.

Q. Are you able to estimate what percentage of the total sportswear production in Boston was done by the twenty-one signatories to this agreement?

Mr. BERGSON. I object, if your Honor please.

The COURT. I think he may answer. He is qualified to answer that question.

94 Mr. BERGSON. It doesn't follow because of the fact he has some knowledge as to what the twenty-one jobbers do in Boston, that he knows what the other twenty-nine do.

The COURT. Have you an opinion?

The WITNESS. Yes, I have an opinion.

The COURT. He may state it over your objection.

Q. What is the answer?

A. For what it may be worth approximately 50 per cent of the volume.

Mr. BERGSON. I can't hear you.

The WITNESS. For what it may be worth, approximately 50 per cent of the volume. Twenty-one firms do approximately 50 per cent of the volume.

The COURT. Twenty-one firms do 50 per cent of all the business in this particular line, women's sportswear?

The WITNESS. Yes, sir.

Q. Mr. Richmond, I hand you a four-page typewritten document and ask you if it is something you turned over to me two or three days ago?

A. Yes, sir.

Q. Who handed you that document?

A. Mr. Rosenberg.

Q. At about what time?

A. Beginning of October, I would say, the end of September; just about that time.

[The document is handed to Mr. Bergson.]

Mr. Malloy. I offer that in evidence.

Mr. Bergson. This is in evidence.

Mr. Malloy. That is a different agreement.

Mr. Bergson. This has already been marked by the Clerk.

The Witness. That is the one I just looked at.

95 Mr. Malloy. I am sorry, your Honor. I picked up the wrong document.

The Court. Before you ask this question I would like to ask the witness a question. As executive director of this Association, do you spend all your time on that particular job?

The Witness. Yes, I do.

The Court. Is it part of your duties to know the volume of business that is done here in Boston in this particular line?

The Witness. Yes, sir, it is, because of the fact that one of our principal occupations is to promote the products on the market.

The Court. Do you have anything to do with statistics affecting this industry?

The Witness. Yes, sir.

The Court. Do you compile statistics?

The Witness. For the Government agencies.

The Court. Is that confined to Boston?

The Witness. No. New England.

The Court, All of New England?

The Witness. Yes, sir.

The Court. And is it part of your duties to keep in touch with the industry as a whole throughout the country?

The Witness. Yes, sir.

The Court. You have some knowledge of the statistics as they are compiled throughout the country affecting this industry?

96 The Witness. Yes, sir.

The Court. All right.

Q. I show you a three-page typewritten document and ask you if that is a document you turned over to me two or three days ago?

A. Yes, sir.

Q. Where did you get that document?

A. I can't tell you from whom because I don't remember. I think it came from one man in particular. I might be doing him a little injustice and I am not sure about it.

Q. What would you call him?

A. I think it came from Coleback Sportswear or Capital Skirt Sportswear; one of the two.

Q. What man in the Coleback Sportswear gave that to you?

A. Mr. Cohen.

Q. Lou Cohen?

A. Yes.

Mr. MALLOY. I desire to have this marked for identification.

[Draft of agreement undated between Women's Sportswear Manufacturers Association and contractors, is marked Plaintiff's Exhibit 5 for identification.]

Mr. MALLOY. You may inquire.

The WITNESS. I might say that that was an estimate that was sent to a great many individuals. It isn't anything unusual.

Mr. MALLOY. You may inquire, Mr. Bergson.

Cross-examination by Mr. Bergson:

Q. Mr. Richmond, you stated a few minutes ago to his Honor that you compiled statistics for Government agencies in connection with the business done by the members of your association?

97 A. Yes, sir.

Q. Do you compile statistics that show the volume of business done by your members for any Government agency?

A. Yes, sir.

Q. Which Government agency?

A. Bureau of Census.

Q. And did you make such compilations during the years 1944 and 1945?

A. I would say so. I am not sure about that, Mr. Bergson.

Q. You are not sure?

A. I am not sure whether it was either 1944 or 1945. You see the Bureau of Census was connected with the Office of Price Administration and as such they publish monthly the business that is done by each section of the country, and we have had to submit estimates to them in my work with the Office of Price Administration. Then again, we did work for the War Production Board.

Q. These were estimates that you sent for the amount of material that you thought your members would want

here in this area during the time that the War Production Board was functioning; is that so?

A. Not estimates of what they would want but estimates of what they had used.

Q. Material that they had used?

A. I might tell you that they were merely estimated figures. They were not by any means authentic figures.

Q. In other words, they were not figures that were taken by you from any examination of the books of the various—

A. No, sir.

Q. They were just merely figures that were compiled by you based upon requests for merchandise that was
98 given to you by the various members?

A. Actually what happened, Mr. Bergson,—

Q. No. Just answer the question. Isn't that the fact? In other words, you were assisting your members in preparing their requests for allocation of material?

A. That is right.

Q. And that was based solely upon estimates that each man gave you?

A. His figures that he gave me were not estimates, Mr. Bergson. They were actual figures, because each manufacturer had to submit to the Bureau of Census his actual production figures.

Q. But your figures were based on estimates?

A. My figures were based on what they told me, and therefore I say they are estimates. I didn't examine their books myself.

Q. Now, in this business of women's sportswear here in Boston it is a fact that there are men who run their own shops, is it not?

A. Yes, sir.

Q. And then there are men who merely buy the raw material and have the goods made up in other shops and sell the finished product?

A. Yes, sir.

Q. It is the latter kind that you call a jobber; isn't that so?

A. Yes, sir.

Q. The other is the manufacturer?

A. Yes.

Q. And there is a distinction in the trade between the manufacturer and the jobber?

A. Yes, sir.

Q. Are all these twenty-one members that have signed the agreement jobbers, or are some of them manufacturers?

A. Some of them are manufacturers.

99 Q. And some manufacturers also give their work to outside shops?

A. That is right.

Q. So that you have a situation in the trade—

The Court. Pardon me for interrupting. They give at least part of their operations,—is that correct,—to outside shops? Some of the manufacturers give part of the operations—

Mr. Bergson. To the outside; that is, not a part of the operations, but part of their production.

The Court. Part of their production. All right.

Q. Now, in 1944 isn't it a fact that the union was making a drive to get the jobbers signed up with the union so that the jobbers would have their work made wholly in union shops?

Mr. Malloy. I object, your Honor.

The Court. I will admit it.

100 The Witness. 1944?

Mr. Bergson. Yes.

A. The Union is always driving.

The Court. The Union what?

The Witness. The Union always attempts to organize plants.

The Court. That is not responsive to the question.

The Witness. I don't understand the question. You mean a special drive?

Q. Yes. At that time wasn't the Union attempting to unionize or to engage in Union contracts with many of the jobbers?

A. That time? [Examining papers.] Not to my knowledge.

Q. Well, isn't it a fact, Mr. Richmond, that Keniston Klassics in 1944 was doing work with non-Union contractors?

A. I don't know, sir.

Q. You don't know?

A. No, sir.

Q. Isn't it true that with reference to Banner Sportswear, it was having its work done in non-Union shops?

A. I don't know, sir.

Q. Isn't it true with reference to College-Town?

A. I don't know that.

Q. Did you have any conferences during the year 1944 with Mr. Kramer representing the Union in an attempt to have these members of your Association sign up with the Union?

Mr. Malloy. I object, your Honor. I might state

101 the Government's position with respect to this whole line of testimony, so that my objection may be considered as going to the whole line.

The COURT. You may. As I understand, you object to the question he has just asked?

Mr. MALLOY. Yes, sir.

The COURT. You may state your objection.

Mr. MALLOY. I object on the ground that a Union may not, according to the decision of the Allen Bradley case in the Supreme Court, combine with business groups to advance its own ends. Therefore it is irrelevant that the Union participated in any of these activities.

The COURT. You are making that specific objection to that question?

Mr. MALLOY. And to all questions dealing with participation of the Union in these negotiations.

The COURT. I will overrule the objection. He may answer.

Mr. BERGSON. Have you lost the question?

The WITNESS. I am afraid I have.

[The last question was read as follows:

"Q. Did you have any conferences during the year 1944 with Mr. Kramer representing the Union in an attempt to have these members of your Association sign up with the Union?"]

102 The COURT. He already has stated in his direct testimony that he did have.

Mr. BERGSON. He stated at one time that he talked with Rosenberg, Mr. Kramer and Mr. Rosenberg, in response to a question by the Government.

The COURT. He may answer that. Did you have some conversation with Mr. Kramer?

The WITNESS. No, sir.

The COURT. Didn't you testify on direct examination that Mr. Kramer was present with Mr. Rosenberg on a couple of occasions?

The WITNESS. Yes, sir; but it was not in regard to unionizing.

The COURT. Was it in regard to having this particular contract signed up?

The WITNESS. Yes, sir; which had nothing to do with the Union.

The COURT. He was present with Mr. Rosenberg?

The WITNESS. Yes, sir.

The COURT. At a couple of conferences with reference to this particular agreement?

The WITNESS. Yes, sir.

The COURT. That was presented to you by Rosenberg representing the Women's Sportswear Manufacturers Association?

The WITNESS. Yes, sir.

Q. Mr. Richmond, isn't it a fact that you represent
103 the various members of your Association in the negotiations that go on between your members and the Union?

A. Only in the event that a group of them so desire.

Q. Did you represent your jobbers in their negotiations with the Union in 1944 in arriving at an agreement between the jobbers and the Union?

A. There wasn't any such agreement, Mr. Bergson, in 1944.

Q. Was there any discussion about their having such an agreement?

The Court. Well now, that is pretty wide.

Q. I mean, in 1944, at this time?

A. I don't remember.

Q. Did you have any discussions with Mr. Kramer with reference to having agreements drawn up between the Union and the jobbers in 1944?

A. I don't think so, sir.

Q. Do you know whether or not your members of the Association had signed up agreements with the Union in 1944?

A. Individual?

Q. Individually.

A. I don't know which of them did.

Q. No. But did you know that some of them had?

A. Yes, sir.

Q. But you don't know how many of them had?

A. No, sir.

Q. You did not participate in any of the negotiations that led up to the signing of the Union agreement between members of your Association and the Union?

A. The individual agreements?

Q. Yes.

A. No, sir.

104 Q. Now, you say it came to your knowledge in September of 1944 that there was some trouble in some of the shops that did work for some of your members?

A. Yes, sir.

Q. Did that come to your knowledge through the members of your Association who were directly involved?

A. Yes, sir.

Q. And were those members the firms that you have named, the three firms that you have named, Keniston Klassics, and College Town and Banner Sportswear?

A. Do I remember what?

Q. Were those the three who came to you with reference to their difficulties in September of 1944?

A. We had quite a few calls. I don't remember whether

they were only those three. I am sure there were more than those three.

Q. When you in your letter referred to the threat of work stoppage, did you have in mind any particular shops where the work stoppage would take place?

A. No, sir.

Q. Did you write that letter on the basis of any complaint that was made to you by any member of your Association?

A. By a group of them.

Q. Will you name that group?

The COURT. You refer to the letter of September—

Mr. BERGSON. Of the 23rd.

Q. Will you name that group?

The COURT. You have the letter in mind that he is referring to?

The WITNESS. Yes, sir.

105 Q. Will you name the group that made that complaint to you?

A. I cannot, sir. I don't remember the exact names.

Q. Do you remember any of them?

A. Yes, I do. Capitol Skirt, that was one.

Q. Was Keniston Klassics one?

A. I don't remember.

Q. Was Banner Sportswear one?

A. I don't remember.

Q. Was College-Town one?

A. I don't remember, Mr. Bergson.

Q. You don't remember any of those three?

A. I don't remember who made the original complaint to us.

Q. I did not ask you who made the original complaints. I asked you who made complaints, and I asked you if any one of these three made complaints to you which formed the basis of the letter which you wrote on September 23d?

A. I don't remember exactly. I won't state exactly that I do, Mr. Bergson.

Q. Do you know whether or not at the time that you wrote this letter of September 23d to Mr. Rosenberg any of the complainants were involved in difficulties with the Union?

A. No, sir.

Q. When you say "No, sir", do you mean by that that you don't know or that they were not in difficulties with the Union?

A. I do not know that they were in difficulties.

Q. You do not know. Will you tell the Court what shops you referred to, you had in mind, when you wrote this letter of September 23d, where the threatened stoppage was going to take place?

A. I just told you that I don't remember the exact names, Mr. Bergson, but I do remember we had a number
106 of complaints.

Q. And you cannot now say what the names of those shops were?

A. No, sir.

Q. And you will not—and you cannot now state that the reason for the threatened stoppage in those proposed shops was due in any way to differences between the shops and the Union?

A. No, sir; I would not know that.

Q. You don't know. Now, after you got the letter from Mr. Rosenberg under date of September 25th, you say that you then had some discussion with Mr. Rosenberg, at which time he presented to you this copy of an agreement which is Exhibit 3?

The COURT. Wait just a moment. You are referring now—

Mr. BERGSON. To the first draft. That is Exhibit 3.

The COURT. All right.

Q. That is correct, isn't it?

A. Yes, sir.

107 Q. And do you say at that time that Mr. Rosenberg presented this agreement to you that he was accompanied by other members of the Association?

A. Yes, sir. No, sir.

The COURT. That is the unsigned agreement?

The WITNESS. The unsigned agreement was given to me first by Mr. Rosenberg and we met in conference afterwards.

Q. When you first got it, Mr. Rosenberg gave it to you, you were alone?

A. That is right, sir.

Q. He left it with you?

A. Yes, sir.

Q. What did you do with the agreement after receiving it then?

A. I had it looked over by an attorney.

Q. Who was that attorney?

A. Bernard A. Riemer.

Q. Did you have any discussion with Mr. Riemer about this agreement?

A. Yes, sir.

Q. Was it as a result of your discussion with Mr. Riemer that you took this agreement over to the Anti-Trust Division and showed it to Mr. Ford?

A. Yes, sir.

Q. After you discussed the matter with Mr. Ford was it then that you had your conference with Mr. Rosenberg and his associate

A. Yes, sir.

Q. Were any members of your Association present at that time?

A. Yes, sir.

Q. And who were they?

A. I think you have that testimony.

The Court. No, who were they?

The Witness. Mr. Kaplan, Mr. Louis Cohen: Those are the only two I remember. There was another one or two there.

108 Q. Yes. Now at the time you had the conference with Mr. Rosenberg, will you tell the Court what you told Mr. Rosenberg at that time?

A. On this case?

Q. Yes.

The Court. With reference to this agreement?

Q. Your draft No. 1.

The Court. What he told Mr. Rosenberg concerning this agreement?

Mr. Bergson. Yes.

A. I told Mr. Rosenberg— [To the Court.] This is at the conference you are talking about?

The Court. Yes.

The Witness. I told him at the conference that the first part of the contract was against the principles of the OPA order for contractors and that it seemed to me anti-trust.

Q. When you said the price part was against OPA, just to what section of that proposed draft did you refer?

A. This is one of them [pointing].

The Court. What section; what are you pointing to?

The Witness. Section 6, last paragraph.

Mr. Bergson. On page 3.

The Witness. [Reading]

109 "Now, Therefore, in order to pay said assessments to the Commonwealth of Massachusetts and the Federal Government, the Jobber agrees to pay the amount necessary to meet said assessments. It is understood and agreed that the above amount is separate and distinct from the price agreed to be paid for the manufacture of garment or garments by the Contractor. Said sum or sums to be computed each and every week based upon the weekly pay roll."

Q. That is what you say—

A. There was another one also, Section 7:

110 "Whereas, a great majority of the employers in this industry have entered into an agreement with the Joint Board of Cloak, Skirt and Dressmakers Union of

the International Ladies Garment Workers Union of Boston, Mass., and

WHEREAS, by the terms of said agreement assessments are made upon the employers and contractors for three per cent of the wages paid to the employees to be known as the Health and Vacation fund; and

WHEREAS, it is the intention of both parties to the within agreement that the ultimate burden of paying said assessment shall be upon the jobber and not the contractors.

NOW, THEREFORE, in order to pay said assessment to aforesaid Union for and in behalf of the workers, the jobber agrees to pay the amount necessary to meet said assessments."

Q. There are two sections that you read that you stated to Mr. Rosenberg you were advised were in violation of the OPA regulations?

A. I told him we had been advised by the attorney of the Office of Price Administration, Mr. Wasky, that we were not permitted to pay.

Q. You also told Mr. Rosenberg that you had been advised that the agreement, apart from the fact that it
111 would violate OPA regulations, was also a violation of the anti-trust law?

A. Yes; that it seemed to be in violation of the anti-trust law.

Q. Will you point out what part of the draft you told Mr. Rosenberg—

A. I didn't point out any part there, sir.

Q. You made just that general assertion?

A. Yes, sir.

Q. Without pointing out any particular part of it that you told him you had been advised contravened the anti-trust law?

A. That is right, sir.

Q. Now, I don't think that you have yet definitely fixed the date of this conference that you had with Mr. Rosenberg at which you discussed this draft No. 1. When did you do it, if you recall?

A. The best I can do, Mr. Bergson, is to tell you it was within that week of grace allowed by Mr. Rosenberg.

The COURT. That is what he said before. We will take a recess.

[Short recess.]

112 Q. [By Mr. BERGSON] Mr. Richmond, I think you stated in your direct examination that after this proposed agreement was presented to you by Mr. Rosenberg and his committee, which is Exhibit 3, that equity proceed-

ings were brought by three of your members against the Association?

A. That is right, sir.

Q. Did you personally participate in the conferences that led up to the filing of those bills in equity?

A. I attended one, if I remember. I think there was only one conference.

Q. You attended a conference?

A. In between the strike period. Two bills of equity were brought as the result of a strike that was called on the contractors, not a strike. The contractors refused to work for three of our manufacturers.

Q. The contractors refused to work for three of your manufacturers, and those three were the Kenniston Klassics, Banner Sportswear and College-Town?

A. Yes, sir.

Q. And as the result of the refusal on the part of the contractors to work for these three concerns did you go with the complainants or the members of these three firms to Mr. Reimer's office and discuss with Mr. Reimer the bringing of injunction proceedings?

A. No. Mr. Reimer came down to my office.

Q. And at your office there did he confer with these three men, these three plaintiffs in the equity proceedings with reference to bringing injunction proceedings?

A. I don't remember, sir.

Q. Were they there?

A. I remember one of them being there.

Q. Which one?

A. Mr. Kaplan of College-Town.

113 Q. When you were conferring with Mr. Reimer with reference to bringing these equity proceedings, were you acting in your capacity as executive director of the Wholesale—of your association?

A. Yes, sir, in view of the stoppage. We didn't want any stoppages. We felt that it might spread.

Q. Is it part of your duty as the executive director of the association to negotiate labor contracts on behalf of your members?

A. No, sir.

Q. And is it part your duty as executive director of the association to settle labor disputes between members of your association and either the union or the contractors?

A. No, sir.

Q. So that when you participated in any conference with Mr. Reimer with reference to bringing legal proceedings as a result of the labor disputes between the contractors and your members, you were not acting in your capacity as executive director of the association?

A. I was, sir, because of the fact that there had been a stoppage in three plants and it looked to me as if it was going to spread from one plant to another. As soon as they got through with three they would take three more.

Q. But it isn't your duty to interfere in any labor matters?

A. It is my duty to interfere in anything that might create a stoppage.

Q. That was the reason that you participated?

A. Yes, sir; that was my whole objective.

114 Q. You were advised, were you not, later on, that an injunction had been procured by these various members of your association?

A. Yes, sir.

Q. Now, after that injunction was secured did you participate in any conferences leading to the dissolution of those injunctions?

A. No, sir.

Q. Did you participate in any conference in attempting to straighten out these difficulties that caused the stoppage?

A. Yes, sir.

Q. And with whom did you take up the matter?

A. Mr. Kramer took it up with me.

Q. And who else was there? Was there anybody else representing the union that conferred with you in reference to it?

A. Oh, I was stopped by some of the organizers on the street and asked why we didn't get together with them in some way.

Q. And was there a Mr. Segal that participated?

A. Yes, sir, there was.

Q. As a result of your conference with Mr. Kramer and Mr. Segal in connection with the stoppages that took place in these three plants did you go to the office of Mr. George Roewer, the attorney for the union?

A. I don't remember, sir.

Q. Would you say that you didn't?

A. No, sir.

Q. What is your best recollection? Did you or did you not?

A. I don't remember.

Q. Have you any recollection?

A. Not of going to Mr. Roewer's office on that

115 night

Q. What?

A. Not of going to Mr. Roewer's office.

Q. And didn't you discuss with Mr. Roewer the drafting of an agreement between the jobbers and the sportswear association?

A. It is possible, sir. I don't remember.

Q. And wasn't this draft No. 2, which is Plaintiff's Exhibit 5 for identification, the draft that was prepared in Mr. Roewer's office as the result of the conference that you had with Mr. Kramer and with Mr. Segal?

A. I don't remember, sir.

Q. Would you say that it isn't?

A. No, sir.

Q. Have you any memory about it?

A. No, sir.

Q. Did I understand your testimony to be that you got this draft from Mr. Rosenberg?

A. No, sir. This draft here was given to me by one of my members, which one I don't know. This here is an original draft that was sent to each individual person.

The COURT. Now, just a moment. Are you now referring to Exhibit 5 for identification?

The WITNESS. No, he is not, sir.

Mr. BERGSON. Yes, your Honor.

Q. Is that the draft that was prepared as the result of the conferences that you had with Mr. Kramer and Mr. Segal in Mr. Roewer's office?

A. No, sir.

Q. If is not?

A. No, sir.

Q. Have you got a copy of the draft that was prepared?

A. No, sir.

116 Q. Did you ever have a copy of that draft?

A. I don't remember going to Mr. Roewer's office on it, but I think you are mixed up, Mr. Bergson.

The COURT. No. Answer his question. You have answered.

The WITNESS. He has got the wrong exhibit here.

The COURT. Just answer his question.

The WITNESS. It is all right with me. That is the one you meant, Mr. Bergson?

Q. No. I am going to ask you—

The COURT. Just one moment. You are not required to volunteer anything. You just answer the questions.

Q. Is the draft No. 1, which is Plaintiff's Exhibit 3, the draft that was prepared in Mr. Roewer's office?

A. I don't remember being in Mr. Roewer's office.

Mr. MALLOY. If your Honor please, that question has been asked about three times and the witness has answered.

Q. You have said that you conferred with Mr. Roewer about an agreement, about a proposed agreement between the jobbers and the Sportswear Association. That is true, isn't it?

A. Yes, sir.

The COURT. You say you did confer with Mr. Roewer about the same agreement?

The WITNESS. During this period? No, sir, I didn't say that.

Q. Will you state at what time you did confer with
117 Mr. Roewer with reference to a proposed agreement between the jobbers and the Association?

A. Between the jobbers and the Association?

Q. Yes.

A. I don't remember conferring with Mr. Roewer about the jobbers and the Association.

118 Q. As a result of the equity proceedings that were brought by members of your Association—

A. Yes, sir.

Q. [Continuing.] —against the Sportswear Association—

A. Yes, sir.

Q. [Continuing.] —you had some conferences with Mr. Roewer?

A. I had one on the telephone that I remember.

Q. Did you have any at his office?

A. Not that I remember.

Q. Did he come to your office?

A. No, sir; not that I remember.

Q. Was there a conference at which you were present with Mr. Roewer, Mr. Kramer, Mr. Segal, and probably Mr. Rosenberg?

A. I honestly don't remember, Mr. Bergson.

Q. Will you say that there was not?

A. No, sir.

Q. Do you remember at any time, whether over the telephone or in person, discussing with Mr. Roewer the draft of an agreement between your jobbers and the Sportswear Association?

A. I remember Mr. Roewer saying to me on the telephone that "If we can get an agreement that is not objectionable, would you fellows be willing to listen?"

Q. Now, as a result of that conference or that talk on the telephone, did you see any draft of an agreement drawn by Mr. Roewer along the lines that you have just mentioned?

A. Yes, I did, sir.

Q. Will you identify which draft it was, if it was either Exhibit 5 for identification or Exhibit 3?

119 A. To the best of my knowledge it wasn't either of these two.

Q. There is another one?

A. Yes, sir.

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Q. Have you a copy of it?

A. No, sir.

Q. To the best of your memory, it is not either 3 or 5 for identification?

A. No, sir.

Q. It is a fact, isn't it, Mr. Richmond, that as a result of the conference that you had with Mr. Roewer, Mr. Kramer, and Mr. Segal together with Mr. Rosenberg, the equity proceedings were dropped?

A. I don't know. I don't remember. I don't remember how they were dropped or why they were dropped.

Q. You don't know. You didn't participate in the settlement that led up to the—

A. No, sir; no, sir.

Q. [Continuing.]—to the dropping?

A. No, sir.

Q. Over what period of time did the negotiations go on between you representing the jobbers and Mr. Rosenberg representing the contractors, that led up to the signing of this agreement which is Exhibit 4?

A. Well, from the time of my first letter up to the time of the signing of the contract.

Q. Now, do you know whether you had one, two, or many conferences that led up to the signing of Exhibit 4?

A. I cannot say the exact number.

Q. Well, there were more than one, was there not?

A. Yes, sir.

Q. And whether or not there were more than one draft of proposed agreements between the jobbers and
120 the Association that led up to the final draft, Exhibit 4 I mean, apart from these two?

A. I don't remember sir. As I recall it, I think the one we finally signed was about the final one, was really the one that I do remember.

Q. Well, do you remember whether there were several drafts prior to that time?

A. No, sir; I don't. You mean after these here?

Q. After those two. I mean, when I came into the picture, do you remember whether there was more than one draft of the agreement?

A. No, I don't, sir.

Q. But you do remember, and you so testify, that you were at my office with the committee?

A. That is right, sir.

Q. Now, in any of the discussions that took place relative to either the proposed drafts or the final drafts, was there anything said about fixing prices for the work to be done by any of these contractors?

A. No, sir.

Q. Was there anything said at any of these conferences by anyone that the Association was going to determine the prices at which the contractors would work for the jobbers?

A. No, sir.

Q. Since March, 1944, up to the present time, in any of your negotiations with this Association, has there been any discussion or any claim on the part of the Association that it had the right to fix the prices for which the contractors would work for the jobbers?

A. No, sir.

Q. Have you heard of any complaints from any of
121 your members that during this time the Association was attempting to fix the prices at which the various contractors were working for your jobbers?

A. I have had no complaints, sir.

Q. And outside of the stoppage for a few days, that took place in the early part of October of 1944, has there been to your knowledge any stoppage of work in any of the shops of your members that has been ordered by this Association?

A. No, sir.

Q. To your knowledge at any time since March of 1944, with the exception of this incident in October of 1944, has it come to your knowledge by way of any complaints from any of your members of the Association that the Sportswear Association has in any way attempted to interfere with the production of sportswear in any of the shops of your jobbers?

A. No, sir.

Mr. Bergson. I think that is all.

The Court. Any questions?

Mr. Malloy. No questions.

The Court. You may step down, sir.

Benjamin P. Kaplan, Sworn.

Direct Examination by Mr. Malloy:

Q. Will you state your full name, please?

A. Benjamin P. Kaplan.

Q. Where do you live, Mr. Kaplan?

A. 37 Embassy Road, in Brighton.

122 Q. What business are you engaged in?

A. Manufacture of sportswear.

Q. And with what company are you connected?

A. College-Town Sportswear, 31 Beach Street, Boston.

Q. And what is your connection with that company?

A. I attend to production—

The Court. No. He does not mean that. Is this company a corporation?

The Witness. In 1944 it was. It is not a corporation today.

Q. It is what at the present time?

A. It is a partnership.

Q. And it was a corporation in 1944?

A. Yes, sir.

Q. What position did you occupy with the company when it was a corporation?

A. Treasurer.

Q. How long had you held that position?

A. Since 1939, I believe.

Q. Had you been in the sportswear business prior to 1939?

A. No, sir.

The Court. Now, what is the form of your firm today? You say it is now a partnership?

The Witness. Yes, sir.

The Court. When did it become a partnership?

The Witness. January 1st, 1945.

The Court. January 1st, 1945?

The Witness. 1945.

The Court. And are you one of the partners now?

123 The Witness. Yes, sir.

Q. You stated that your place of business is at 23 Beach Street?

A. 31.

Q. 31 Beach Street?

A. Yes, sir.

Q. What establishment do you have at 31 Beach Street?

Mr. Malloy. May I withdraw the question?

Q. In 1944, what sort of an establishment did you have at 31 Beach Street?

A. We had a stock room and cutting room.

Q. And how many employees did you have?

A. About fourteen.

Q. Did you have any sales offices?

A. Yes, sir.

Q. Where were they located? Where was it located?

A. New York City.

The Court. What place in New York City?

The Witness. 1410 Broadway.

Q. Did you in 1944 employ any salesmen?

A. Yes, sir.

Q. What territories—

The Court. How many salesmen did you employ at that time, approximately?

The WITNESS. Five.
The COURT. Now, what was the territory covered?
The WITNESS. As far West as Denver, Colorado.
The COURT. From where?
The WITNESS. From Boston to Denver.
Q. And how far South?
A. Deep South.
Q. Down to the—
A. Florida, yes.

Q. What do you understand is meant by women's
124 sportswear? What articles does that cover?

The COURT. Mr. Malloy, just a moment. [To the witness] You covered other states in the South besides Florida?
The WITNESS. Oh, yes, yes. I don't remember them all.
The COURT. Well, practically all?
The WITNESS. Yes; North Carolina, South Carolina, Georgia, Alabama, Tennessee.
The COURT. Louisiana?
The WITNESS. That is right.
The COURT. Mississippi?
The WITNESS. That is right.
Q. Your salesmen also traveled throughout Western states?
A. Yes, sir.
Q. And how about the Northern states?
A. Which ones?
Q. New York, Pennsylvania?
A. Oh, yes; New York, Pennsylvania, Ohio.
The COURT. So you covered pretty much the entire section of the country from Massachusetts to Colorado?
The WITNESS. That is right.
The COURT. That is North and South?
The WITNESS. Yes.
The COURT. All right.
Q. What sort of articles of women's clothing make up sportswear?
A. Jackets, skirts, slacks, shorts, jumper dresses.

125 Q. From what cloth do you make up your sportswear?

A. From wool; wool, rayons, and cottons.
The COURT. Wool, cotton, rayon?
The WITNESS. Rayons.
The COURT. Rayons?
The WITNESS. Yes.
Q. Where do you receive your orders for sportswear?
A. Both in New York and in Boston.

Q. From your salesmen who are traveling throughout the United States?

A. Yes, sir.

Q. Under normal conditions what do you do when you receive an order for sportswear?

Mr. BERGSON. I don't know what you mean by normal conditions.

The COURT. No.

Q. What is your customary practice when you receive an order for sportswear?

Mr. BERGSON. I suppose—

The COURT. What was your practice in 1944?

Q. When you received an order for sportswear?

A. Well, we cut it at 31 Beach Street and give it out to contractors to be made.

The COURT. You cut—

The WITNESS. We cut it at 31 Beach Street and gave it out to contractors to be made.

126 Q. How did you purchase your cloth?

A. From mills and jobbers.

Q. Where were the mills located?

A. Located New Hampshire, Pennsylvania, Tennessee.

The COURT. Did you buy your cloths from mills in this State, in Massachusetts?

The WITNESS. I don't know whether they are made here or not but I think they are made in mills in Massachusetts.

The COURT. Did you buy any cloth from mills in Massachusetts?

The WITNESS. We bought from jobbers in Boston.

The COURT. All right. But you did buy cloth from various mills throughout the country?

The WITNESS. Yes, sir.

The COURT. And you enumerated some of the States. Now, can you say what percentage, if any, of the cloth that was used in this business was purchased from mills in Massachusetts?

The WITNESS. Does that include jobbers? I don't know the sales.

The COURT. Cloth coming from mills? Don't you know where cloth comes from, the mill from which it comes?

The WITNESS. Yes, but I don't know the location.

The COURT. You don't know the location.

Q. What do you do to purchase cloth, Mr. Kaplan?

A. I have purchased it from salesmen and sales agents.

127 Q. Where are those sales agents generally located?

A. Most of them are in New York.

Q. So you place your order with a sales agent in New York?

A. In New York.

The Court. Where is it shipped from?

Q. Yes, where does the cloth come from?

A. From the mill.

Q. Does it come direct from the mill to you or from the agent in New York to you?

A. Both; some from the agent in New York, they have a stockroom there, and some comes from the mill direct.

Q. You, then, place your order with the agent?

A. That is right.

Q. And after you—

The Court. You place your order for your cloth with the agent who has a place of business in New York; is that right?

The Witness. Yes, sir.

The Court. All your cloth, all your orders for cloth were through the jobber?

The Witness. Not 100 per cent. I don't know what per cent.

The Court. You bought through your agents in New York?

The Witness. Yes.

The Court. Some of it is shipped to you direct and some—

The Witness. No, no, no. When the goods is bought in New York, the people that take the order sometimes
128 they have an office in New York and they ship from New York, and sometimes they ship it direct from the mill.

The Court. That is what I thought.

Q. What happens when you receive the cloth at your place of business in Boston?

A. We just cut it at 31 Beach Street.

Q. In 1944, did you employ any contractors?

A. Yes, sir.

Q. Who were those contractors?

A. Max Herscowitz, Mario Sportswear. That is the only two I can remember now.

Q. Did you turn over your cut cloth to those contractors in 1944 for stitching?

A. Yes, sir.

Q. Was that stitching done by hand or by machine?

A. By machine.

Q. Did you supply the machines?

A. No.

Q. Have you ever visited the places of business of those contractors?

A. Yes.

Q. Let us take, for example, the place of business of Max Herscowitz. Do you have any idea how many machines he has approximately?

A. About six.

Q. Did he employ stitchers?

A. Yes, sir.

Q. How many employees did he have?

The COURT. If you know, give an approximate number.

A. About ten or twelve.

Q. What was the situation with respect to Mario Sportswear? How many machines did he have, do you know?

A. He had about fifty.

Q. About how many employees did he have?

A. About 65 or 70.

129 Q. Directing your attention to September 1944, were you asked by any representative of Women's Sportswear Manufacturers Association to sign an agreement?

Mr. BERGSON. In September?

A. In September, no.

Q. Were you ever asked by any representative of the Women's Sportswear Manufacturers Association to sign an agreement?

A. Yes.

Q. Can you fix the approximate date?

A. I would say it was in October.

Q. I show you Government's Exhibit 3 and I will ask you if that is the agreement which you were asked to sign in October, 1944?

A. [After perusing.] Yes.

Q. Did you participate in any conference with respect to Government's Exhibit 3 with any representatives of the Women's Sportswear Manufacturers Association? A. I believe I did.

Q. Do you recall who was present on behalf of the Women's Sportswear Manufacturers Association?

A. I think Mr. Rosenberg, Max Herscowitz, Mr. Mover. I don't remember any of the others.

The COURT. When and where was this conference?

The WITNESS. At 25 Kneeland Street in Boston.

The COURT. When?

Q. In whose office?

A. The Association office, Mr. Rosenberg's office.

130 Q. About what date did that take place?

A. I would say that was about the last week in September, on that one there [pointing].

Q. What, if any, statements did the representatives of the Women's Sportswear Manufacturers Association make as to what would happen if the agreement, Government's Exhibit 3, was not signed?

The Court. No, I think I will exclude that question. What representations were made?

Mr. Bergson. And by whom?

The Court. At that time, by either Mr. Rosenberg or any representative of the Women's Sportswear Association.

Mr. Bergson. I think he ought to tell who makes the representation.

The Court. Yes.

Q. Did anyone on behalf of the Women's Sportswear Manufacturers Association make any representations as to Government's Exhibit 3?

A. Everybody was talking about the agreement. We all participated.

The Court. All talking at once?

The Witness. Oh, well, no.

Q. Do your recall what Mr. Rosenberg said?

A. Well, he would say something and we would answer—have someone else do the work.

Q. Specifically what did he say?

131 A. He said if we didn't sign the agreement with the contractor's group the work would be stopped.

The Court. Rosenberg said that?

The Witness. Yes.

Q. Did you sign that agreement?

A. I did not.

Q. At that time, September 1944, did you have any work then in the hands of these contractors?

A. Yes.

Q. What contractor had you furnished cloth to at that time?

A. Max Herscowitz was one.

Q. What happened then after this conference?

A. I went to New York. I believe it was at the beginning of October, and the first day I was there I got a telephone call from my bookkeeper that Max Herscowitz had stopped working.

Q. What did you do?

A. I took the train back to Boston.

Q. Then what did you do after that?

A. I went over to see Max Herscowitz to find out why the work had been stopped.

Q. And what did he tell you?

Mr. BERGSON. Wait a minute. That is only applicable to Max Herscowitz.

The COURT. He may answer that for the time being. The testimony is received for the time being.

Mr. MALLOY. Subject to being connected up.

The COURT. That is right.

Q. What did he say?

The COURT. As applicable to Herscowitz.

132 A. He said unless I signed the agreement with the contractors association he could no longer work.

Q. Then what did you do?

A. I went up to Larry Richmond.

Q. And then what happened after that?

The COURT. Not the conversation but what happened.

Q. What did you do?

A. We obtained the services of the attorney, Bernard Riemer,

Q. Then what proceeding took place?

A. We went down to Mr. Ford's office. He didn't want to risk an opinion as to what should be done, so we went to the, I think it was Judge Baker's office and got an injunction.

Q. Were there any further negotiations had in which you participated after that with members of the defendant Women's Sportswear Association?

A. Not then on that agreement. There was a new agreement presented.

Q. A new agreement was presented?

A. Yes, which we signed.

The COURT. I believe the witness refers to Exhibit 4.

Q. I hand you Exhibit 4, Mr. Kaplan. Is that the agreement you are referring to?

A. Yes, that is the one.

Q. Can you identify your signature to that agreement?

A. Sure.

The COURT. On page 5, isn't it? On page 5 your signature appears?

The WITNESS. Sure it is. The second line.

The COURT. See if that is on page 5. Are the pages numbered?

133 The WITNESS. 5, your Honor.

Mr. MALLOY. Page 5, the second line.

The COURT. All right.

Q. At the time of the work stoppage, Mr. Kaplan, what was the value of the cloth that you had turned over to Mr. Herschowitz?

Mr. Bergson. I object.

The Court. No, he may answer that.

Mr. Bergson. Note my objection.

A. I would say between $3,000 and $4,000.

Q. What happened to that cloth when you had your conversation with Mr. Herschowitz?

A. Well, I said, "If you aren't going to work on it I am going to take it—"

The Court. No, that isn't what he asked you. What happened to the cloth?

The Witness. It remained on his premises.

Q. Did you ask for it?

A. Yes.

Q. What did he tell you?

Mr. Bergson. That is limited only to Mr. Herscowitz?

The Court. Yes.

A. He said that he couldn't give it to me because he had started to take part of the bundles apart, it was impossible to give it to me back until he finished what work he had on it.

Q. Did you have orders for the garments there
134 that Mr. Herscowitz was working on?

A. Yes, sir.

Q. Where were the purchasers located who had placed those orders with you?

A. Different States of the Union.

The Court. Any in Massachusetts?

The Witness. I would say about 10 or 15 per cent.

The Court. In Massachusetts?

The Witness. No, sir.

The Court. All going to States outside of Massachusetts?

The Witness. Yes, sir.

Q. About what percentage of your finished sportswear, Mr. Kaplan, was sold outside the Commonwealth of Massachusetts in 1944 and in 1945?

A. I would say about 75, 80 per cent.

The Court. That is, you had orders for that percentage of it outside of the State of Massachusetts and you billed that, did you?

The Witness. Yes, sir, outside of Massachusetts.

The Court. That percentage. All right.

Q. What was your gross annual business in 1944 and 1945?

A. I don't know exactly. I would say between $600,000 and $750,000.

Mr. Bergson. One year?

The WITNESS. Yes, sir.
Mr. BERGSON. Which year?
The WITNESS. '44.
The COURT. In '44 you think, you say, six hundred

135 The WITNESS. To seven hundred thousand. I didn't bring the figures. I don't know exact.
The COURT. Would that be true also for the year 1945?
The WITNESS. Yes, sir.
Q. Could you tell what relationship the cost of the stitching bears to the total cost of a sportswear garment?
A. Well, it varied on different garments.
Mr. BERGSON. You mean as to the goods?
Mr. MALLOY. We are talking as to the goods.
The COURT. He means the relation, the cost of the stitching in relation to the whole finished garment.
The WITNESS. In Herscowitz's case it was about a third.
Q. Can you tell us something about—
The COURT. In other words, that takes in the cost of the cloth and all other parts of the garment?
The WITNESS. No, it was a third of our selling price.
The COURT. A third of your selling price?
The WITNESS. Yes. The labor is about a third of the selling price.
The COURT. A third labor?
The WITNESS. Yes.
The COURT. The stitching, that work was done by the contractor?
The WITNESS. Yes.

136 The COURT. Referring simply to Herscowitz?
The WITNESS. That is right.
The COURT. That represented about one-third?
The WITNESS. Of our selling price.
The COURT. Of your selling price?
The WITNESS. Yes, sir.
Q. You furnish the buttons and ornaments that went into the finished sportswear?
A. No.
Q. They were supplied by the—
A. Contractor.
The COURT. The buttons themselves and the ornaments were supplied by the contractor?
The WITNESS. Yes. All we gave him was the cloth and canvas and lining.
The COURT. And the pattern?
The WITNESS. No, we cut them in sizes.
Q. Women's sportswear is a seasonal business?
A. Highly seasonal.

Q. Will you describe in what respect it is?

A. The spring season, summer season, fall season,—certain goods have to be shipped out according to the season.

Q. You maintain inventories of cloth and finished sportswear?

A. Yes, sir.

Q. How extensive inventories?

A. I couldn't say exactly. It wasn't too much.

The Court. There was reason for it in 1944?

The Witness. Yes.

137 The Court. The reason being you couldn't get the material?

The Witness. Couldn't get material, that is right.

The Court. Did the situation change somewhat in 1945?

The Witness. Yes.

Mr. Malloy. You may inquire.

Cross-examination by Mr. Bergson:

Q. After you started your injunction proceedings in 1944 did you participate in any negotiations that led up to the dismissal of those proceedings?

A. No, I did not.

Q. Do you know what happened to those proceedings?

A. They were dropped, I think.

Q. Did you have something to do about the dropping of them?

A. Well, the men went back to work and I didn't care about the injunction.

Q. Well, now, during the time that the injunction was in force did you confer with the union representatives with reference to having the men go back to work?

A. No.

Q. Did you talk with Mr. Kramer?

A. No. It wasn't in Boston.

Q. Did you talk with Mr. Segal?

A. I don't remember.

Q. Will you say that you didn't?

A. I don't remember.

Q. Will you say that you didn't?

A. If I don't remember—

The Court. That calls for a Yes or No. He is asking now will you say that you didn't.

The Witness. No.

The Court. All right.

138 Were you one of the committee representing the jobbers that sat in and worked out the agreement which was finally signed between the jobbers and the Sportswear Association?

A. No, sir.

Q. You had no part of it?
A. No, sir.
Q. So your connection with this matter simplifies itself into these facts, namely, that you were asked to sign the draft which is Exhibit 3 some time about the end of September, 1944, and you refused?
A. Yes, sir.
Q. Then there was a stoppage in your shop, in Hersco-witz' shop, is that right?
A. Yes, sir.
Q. You brought injunction proceedings; is that right?
A. Yes, sir.
Q. The men then went back to work?
A. Yes, sir.
Q. You dropped the injunction proceedings?
A. I didn't drop it. It was dropped.
Q. I mean the injunction proceedings were dropped?
A. Were dropped.
Q. And then some time later you signed the agreement which is Exhibit 4?
The COURT. You have already testified that you have.
The WITNESS. I want to see it just a moment.
A. Yes, that is the one.
Q. That is all you had to do with it?
A. That is right.
Q. In 1944, in October, did you ever see me?
A. No, sir.
Q. Were you ever at my office at 31 State Street?
A. No, sir.
Q. Did you come up to my office with Mr. Richmond and confer with reference to an agreement which subse-
139 quently was drawn up as Exhibit 4?
A. This agreement, yes. I think I was in your office once.
Q. Oh, you were in my office?
A. Yes; just once.
Q. And that was before you signed that agreement?
A. Sure.
Q. Yes. And you came there to discuss what should be in that agreement, did you, Mr. Kaplan?
A. I don't remember that.
The COURT. No. Did you go there for the purpose of discussing, first of all, whether there was to be an agreement, and if there was to be an agreement, what was to be in the agreement, if you went that far?
A. Yes, sir.
Q. And prior to coming to my office hadn't you discussed the question of an agreement and the form of the agreement with Mr. Roewer, the attorney for the union?

A. Roewer? No.

Q. Are you sure of that?

A. I am pretty sure. I don't know who Mr. Roewer—I mean offhand I don't recall Mr. Roewer at all.

Q. Did you discuss with Mr. Kramer, Mr. Segal and Mr. Rosenberg the question of entering into an agreement with this association?

A. The only time I remember of going to your office is once.

Q. Wait a moment. Just answer the question that I put to you.

Mr. MALLOY. I object to this line of testimony the same as I did with respect to—

The COURT. All right. Your objection will be noted. [To the witness]: Do you want the last question read?

The WITNESS. Yes, sir.

[Last question read.]

140 A. I don't remember.

Q. Would you say that you didn't?

A. Yes, I will say I didn't.

Q. Have you individually signed an agreement with the union?

A. Yes, sir.

Q. When did you sign such an agreement with the union?

A. September, 1944.

Q. When in September of 1944?

A. About the 5th or 6th.

Q. Have you got that agreement with you here?

A. No, I have not.

The COURT. Just a moment. Is that an agreement that was made by your employees and your concern?

The WITNESS. No, sir. Our concern and the union, yes.

The COURT. With the employees that you employed in your own firm?

The WITNESS. That is right.

Q. And didn't the agreement also cover employees of any shop, of any contracting shop that you might use in having your garments made up?

A. Partly.

Q. What do you mean, partly?

A. Well, I think it said we had to give the work to union shops, and if they were unable to take it or they had too much work, we could then give it to non-union shops.

Q. Yes, but your agreement with the union covered—

The COURT. Now, you are asking him to construe the agreement.

Mr. BERGSON. I am not asking you to construe it.

141 I am asking him for his knowledge.

The COURT. See whether he has knowledge. He can testify whether he has knowledge or not.

Q. Did you know that your agreement with the union covered the employees in the shops of your contractors?

A. No.

Q. Didn't you know that your agreement with the union covered the wages which were to be paid the operators?

The COURT. Operators where?

Mr. BERGSON. That is just the reason I didn't want to ask him where. That was going to be my next question.

The COURT. I will exclude that question.

Q. You have no operators in your shop, have you?

A. No, sir.

Q. And your operators are in the contracting shop, aren't they?

A. Yes, sir.

The COURT. Just one moment. Do you mean to say that you have operators in contractors' shops?

The WITNESS. No. He asked me—

The COURT. Who are employed by you and hired by you?

The WITNESS. No, sir.

Q. The operators work in the contractor's shop?

A. That is right.

Q. And the union agreement covers the wages of those operators?

A. I don't know. It covers the contractors.

Q. Wasn't the reason for the difficulty that you had with Herscowitz in September of 1944 due to the fact that you had refused to sign an agreement with the union?

A. No, sir.

142 Q. Were you at that time employing non-union shops as contractors?

A. Both union and non-union.

Q. But weren't you employing non-union?

A. Yes, sir.

Q. And wasn't the—

The COURT. Just a moment. He said prior to that he was employing both union and non-union.

Mr. BERGSON. Yes.

The COURT. Now you ask him whether or not he employed non-union shops. Of course that follows, that he was employing some non-union, not exclusively union shops. Were you?

The WITNESS. No. It was union and non-union.

The COURT. All right. Then we have that settled.

Q. And wasn't that difficulty with Herscowitz' shop due to the fact that you were giving out work to non-union shops?

A. No, sir.

Q. And wasn't the union insisting at that time that you confine all your work to union shops?

A. No, sir.

Q. You made reference to the fact that when Herscowitz stopped operations in September of 1944, that he had about three or four thousand dollars worth of cloth of yours in his premises?

A. Yes, sir.

Q. Did he subsequently finish those goods?

A. Yes, sir.

Q. And you sold them in the usual course of business?

A. Yes, sir.

Mr. BERGSON. That is all.

143 Re-direct Examination by Mr. MALLOY:

Q. Just one question. Mr. Bergson brought out that you had made an agreement with the union that you entered into on September 5th or 6th, 1944.

A. Yes.

Q. But no one asked you whether this agreement covered contractors. Do you recall whether there is any provision in that agreement which requires you to deal with association members only?

A. No.

Mr. MALLOY. That is all.

The COURT. You may step down.

LOUIS COHEN, Sworn.

Direct Examination by Mr. MALLOY:

Q. Your full name, please, Mr. Cohen?

A. Louis Cohen.

Q. Where do you live?

A. 121 Cotton Street, Newton Center.

Q. What is your business, Mr. Cohen?

A. Manufacture of sportswear.

Q. What is the name of the concern you are connected with?

A. Coleback.

Q. Is that a corporation?

A. It is.

Q. Where is your place of business located?

A. 99 Chauncy Street.

The COURT. A corporation?

The WITNESS. Yes, sir.

Q. What is your position with the corporation?

A. Treasurer.

144 Q. How long have you held that position?

A. Since 1940.

The COURT. Treasurer and also president?
The WITNESS. Yes, sir.
Q. How long have you been in the sportswear business?
A. About eleven years.
Q. What kind of an establishment do you have on Chauncy Street?
A. We receive our goods there, we cut it, we send it out to contractors, and when we get it back we ship it somewhere.
Q. How many employees do you have?
A. About ten.
Q. Are those employees members of a labor union?
A. No, they are not.
Q. You have a non-union shop?
A. As far as I know they are not.
Q. Do you employ salesmen?
A. Yes, we do.
Q. What area do those salesmen cover?
A. Pennsylvania, Maryland, Delaware, New England, Chicago, Missouri, Michigan, Ohio, all through the Middle West and part of the South, and New York.
Q. And what part of the South?
A. We cover Virginia, Maryland and other parts of the South through our New York office.
Q. Do you maintain any sales offices?
A. Yes, we do.
Q. And whereabouts?
A. We maintain one in New York City and one in Chicago.
Q. Where do you purchase your cloth?
A. Mostly in New York.
Q. Where are the mills located?
A. New Hampshire, Rhode Island, Pennsylvania, parts of the South.
The COURT. Do you get any from Massachusetts?
145 The WITNESS. I would say that we do. I wouldn't be—
The COURT. How large a percentage?
The WITNESS. Very small percentage.
The COURT. The rest is outside?
The WITNESS. Yes, sir.
Q. What percentage of your finished sportswear is sold outside of Massachusetts?
A. 90 per cent.
Q. In 1941, Mr. Cohen, were you employing any contractors to do the stitching of your garments?
A. Yes, I was.
Q. What were the names of those contractors?

A. We employed S. Mover & Sons, we employed B. S. & G. Manufacturing Company; various others.

Q. Who was given the greater part of your work?

A. S. Mover & Sons.

Q. I hand you what purports to be a letter from Mr. Rosenberg, Executive Director of the Women's Sportswear Association, dated March 4, 1944, to you, Mr. Cohen, and ask you whether you received such a letter?

A. Yes, I did.

Mr. MALLOY. I desire to offer this letter in evidence [handing to Mr. Bergson].

Mr. BERGSON. No objection.

[Letter dated March 1, 1944, from Women's Sportswear Association to Coleback Sportswear, is marked Plaintiff's Exhibit 6.]

Q. After you received that letter, Mr. Cohen, did you have any contacts with the defendant, Bernard D. Rosenberg?

A. Not with him individually.

146 Q. Did you have any contacts with any representative of the Women's Sportswear Association?

A. As a group, as a committee, I did.

Q. And what was the nature of the contact, and when did it take place?

Mr. BERGSON. When did it take place, first.

A. I should say from what I have heard here, not of my own knowledge, some time in September of 1944.

The COURT. We don't want what you heard here. We want your knowledge.

The WITNESS. My recollection would be in September of 1944.

Q. Who was present at that conference?

A. There was a conference at the office of our association. I believe there was Mr. Rosenberg present, there was Mr. Mover, there was Mr. Cagan, there was Mr. Herscowitz, there was Mr. Richmond from the Iowa Association, Mr. Kaplan, myself. I think there was a few others. There was also Mr. Kramer present at that time as I recall it.

Q. Were any representations made on behalf of the Women's Sportswear Association about a proposed agreement?

A. Yes, there were.

147 Q. I direct your attention to Government's Exhibit 3, and ask you if that is the agreement referred to?

A. Yes; I think it is.

Q. What representations, if any, were made by Mr. Rosenberg about the agreement?

A. They wanted us to sign that agreement. sign that agreement.

The COURT. No. What did Mr. Rosenberg say, if you can recall now?

The WITNESS. Wanted us to sign that agreement.

The COURT. He did?

The WITNESS. He did, yes, wanted us to.

Q. Did any other representative of the Women's Sportswear Association make such a representation, and if they did, please name the man.

A. As I recall it, Mr. Rosenberg was doing most of the talking for his group. The others were, I think, merely there, except when we got into heated arguments, somebody would say a few words, but other than that Mr. Rosenberg would do the talking for their group.

Q. Did you sign the agreement, Government's Exhibit 3, Mr. Cohen?

A. The one you just showed me?

Q. Yes.

A. No, I did not.

Q. Had you ever received prior to this conference to which you have just testified, a proposed agreement from any representative of the Sportswear Association?

A. I don't believe so.

148 Q. I show you what has been marked as Government's Exhibit 5 for identification, and ask if you have ever seen that document before?

A. I don't recall ever seeing this before.

Q. I show you Government's Exhibit 4, and direct your attention to page 5, and ask if you can identify your signature?

A. Yes; I can.

Q. That is alongside of Coleback Sportswear?

A. That is right.

Q. Did you participate in any discussions leading up to the signing of this agreement, Government's Exhibit 4?

A. Only the discussion at the conference that I just mentioned before.

Q. In 1944, Mr. Cohen, what was your gross annual business approximately?

A. Approximately $600,000.

The COURT. In 1945?

The WITNESS. About the same.

The COURT. The same? All right. I would have asked the same question as to 1945. The gross business was about the same?

The WITNESS. About the same.

Mr. MALLOY. That is all.

Mr. BERGSON. I have no questions.

The COURT. I would like to ask some questions. What do you say is the percentage of cost of this work that is done by the contractor—that is, the sewing and putting
149 on buttons and ornaments? What relation has that to your selling price?

The WITNESS. I would say about one-third.

The COURT. All right. Now, when these garments are returned to you in their finished form—they are finished, aren't they, when they come back from the contractor?

The WITNESS. Yes; they are finished.

The COURT. They are shipped by you to—

The WITNESS. Various accounts.

The COURT. What percentage of those accounts lie outside of the confines of Massachusetts?

The WITNESS. I would say at least 90 per cent.

The COURT. All right. All right, sir.

[The witness is excused]

MILTON H. FINE, Sworn.

Direct Examination by Mr. MALLOY:

Q. Your full name, please, Mr. Fine?

A. Milton H. Fine.

Q. Where do you live?

A. 20 Risley Road, West Newton.

Q. What is your occupation, Mr. Fine?

A. Sportswear manufacturer.

Q. What company are you connected with now?

A. M. H. Fine Company.

Q. How long have you had your own business?

A. Since January, 1946.

150 Q. What company were you connected with prior to January, 1946?

A. Standard Sportswear Company, 75 Kneeland Street.

Q. And how long had you been with the Standard Sportswear Company?

A. Since July 1, 1938.

Q. In what capacity were you employed by the Standard Sportswear Company?

A. I was a partner.

Q. You were one of the partners?

A. Yes.

Q. I direct your attention to Government's Exhibit 4, Mr. Fine, and ask you if you can identify your signature on page 4 of that exhibit?

A. Yes; that is my signature.

Q. On behalf of what company?

A. On behalf of the Standard Sportswear Company.

Q. I want to direct your attention, Mr. Fine, just to the business now of the Standard Sportswear Company. In 1944 that company had a place of business where?

A. At 75 Kneeland Street.

Q. And how many employees did you have?

A. We had about five.

Q. You were engaged in the sportswear business women's sportswear business?

A. In our place, just the bookkeeping department, shipping department, and sales force.

Q. And did you have a sales office?

A. Yes; in New York.

Q. And did you employ salesmen? A. Yes.

Q. Where did those salesmen travel?

A. Well, it was just a sales office in New York. They did not travel.

Q. You had no salesmen other than the ones at your office?

151 A. Yes, we had salesmen on the road.

Q. What area did the salesmen cover?

A. New England.

Q. How many salesmen did you have?

A. We had one in New England.

Q. Just covered New England?

A. And one in New York State.

The Court. So you had two, one in New England and one in New York State?

The Witness. When I said New England, I included New York State.

The Court. So the one man covered that territory?

The Witness. Yes, sir.

The Court. New England and New York State?

The Witness. Yes, sir.

The Court. So you only had one salesman?

The Witness. Yes.

Q. Where did you purchase your cloth?

A. Through mills throughout the country, through selling offices in New York.

Q. Do you know where those mills were located?

A. Oh, in Maine, New Hampshire, West Virginia, Ohio, Massachusetts.

Q. Could you state what percentage of your cloth came from mills located outside of Massachusetts?

A. 60 or 70 per cent.

Q. And could you state what percentage of your finished sportswear was sold outside of the State of Massachusetts?

A. 80 per cent.

Q. Could you tell us what percentage the cost of
152 stitching would bear to the cost of the garment?

A. I would say it would run approximately what the other opinions have been, a third.

Q. In 1944 did you employ the services of any contractor?

A. Yes.

Q. What contractor did you use?

A. S. & W. Sportswear and Hynot Sportswear.

Q. Have you visited those establishments?

A. Yes, sir.

Q. Do you know how many machines the Hynot Sportswear has?

A. 18 or 20.

Q. And do you know about how many employees they have?

A. 22 or 24.

Mr. MALLOY. You may inquire.

The COURT. In other words, they have one oporator for each machine?

The WITNESS. Each machine.

The COURT. And then—

The WITNESS. Finishing and pressing.

The COURT. Other people on finishing and pressing?

The WITNESS. Yes.

Cross-examination by Mr. BERGSON

Q. Just one question, Mr. Fine. You say you had salesmen traveling through New England and New York?

The COURT. He had one.

A. Yes.

153 Q. Is Boston the only market that manufactures women's sportswear?

A. No, sir; no.

Q. There are other markets?

A. Oh, yes, sir.

Q. And do your goods compete with the goods manufactured in the other markets?

A. Yes, sir.

Mr. BERGSON. That is all.

The COURT. No further questions? All right.

ARTHUR L. RUBIN, Sworn

Direct Examination by Mr. KILGORE

Q. Will you state your full name, Mr. Rubin?

A. Arthur L. Rubin.

Q. And your address?

A. 145 Babcock Street, Brookline.

Q. Will you state your occupation, please?

A. Sportswear manufacturer.
Q. Are you connected with a company or partnership?
A. Yes, sir.
Q. Which? Whereabouts is that located?
A. 105 Chauncy Street.
The Court. What is the name of your firm?
The Witness. Campus Skirt Manufacturing Company.
The Court. Now, is that a corporation or a partnership?
The Witness. Yes, it is.
The Court. A corporation?
The Witness. Yes, sir.
154 The Court. And do you hold an office in the corporation?
The Witness. Yes, sir.
The Court. And are you also a stockholder?
The Witness. Yes, sir.
The Court. What is your office?
The Witness. Treasurer.
Q. How long have you been treasurer of the Campus Skirt?
A. Since 1941.
Q. How long have you been engaged in the sportswear industry manufacturing?
A. Oh, about 8 years.
The Court. 8 years?
The Witness. Yes, sir.
Q. In 1944 then you were treasurer of Campus Skirt?
A. Yes.
Q. Does Campus Skirt Manufacturing Company maintain sales offices any place?
A. Yes, sir.
Q. Would you give the location?
A. New York and Chicago.
Q. Do they maintain any salesmen on the road?
A. Yes.
Q. What territories do they cover?
A. Middle West and South.
Q. Do you have any in the New England section?
A. Yes, sir.
Q. What type of customers are solicited by your sales agent?
Mr. Bergson. What do you mean by that, type of customers?
Mr. Kilgore. Whether or not they are mostly order houses or—
155 The Court. What business are they engaged in? What are they, retail business?
The Witness. Retail business; yes, sir.

The Court. They are the retailers?

The Witness. Retailers.

The Court. Not jobbers or wholesalers?

The Witness. That is right.

Q. Are the orders for the finished sportswear sent in to the New York office and channeled in?

A. Well, both New York and direct to Boston.

Q. Which office orders the cloth that you use in manufacturing?

A. Boston office.

Q. Do you know the location of the mills?

A. Yes, sir.

Q. Will you give those, please?

A. Well, in Maine, New Hampshire, Vermont, some Rhode Island, some Pennsylvania, some Tennessee.

Q. Do you get any from the mills located in Massachusetts?

A. Very little.

Q. Could you estimate the percentage of that?

A. About 10 per cent.

Q. Could you estimate the percentage of the finished sportswear that is sold outside the State of Massachusetts?

A. Approximately 80 per cent.

The Court. May I just interrupt here just a moment? Do you obtain the orders first before you get your cloth, put your orders in for cloth?

156 The Witness. No.

The Court. You have an inventory of cloth?

The Witness. Yes, sir.

The Court. Did you maintain a large inventory in 1944 and 1945?

The Witness. I don't know what you mean by large.

The Court. Did you have—well, I suppose it might have some relationship to the amount of business that you performed, whether it was large or small or otherwise.

The Witness. A fair-sized inventory.

The Court. You know what I mean by an inventory?

The Witness. Yes, sir.

The Court. The cloth already there?

The Witness. That is right.

The Court. Your orders for the purchase of the cloth did not depend on the orders that you got for the finished garments?

The Witness. No.

The Court. What did you do, anticipate the amount of orders you would have?

The Witness. Yes, sir.

The Court. The amount of business you would have?

The WITNESS. Yes, sir.

The COURT. So you ordered the cloth, a large percentage of it, before you got your orders for the finished
157 garments?

The WITNESS. That is right.

The COURT. That cloth came from various mills directly to Boston?

The WITNESS. Yes, it did.

The COURT. And some of it was shipped from your agent in New York?

The WITNESS. New York, that is right.

The COURT. Did the agent in Chicago ship any of the cloth to you?

The WITNESS. No. That is a salesman in Chicago.

The COURT. You didn't have any agent there?

The WITNESS. That is right.

The COURT. That Middle West is not much of a territory?

The WITNESS. I did not get any from it.

[Adjourned at 1 p. m., to be resumed at 2:15 p. m.]

158 AFTERNOON SESSION

ARTHUR L. RUBIN, Resumed.

Direct Examination by Mr. KILGORE, Continued:

Q. Mr. Rubin, can you estimate approximately the gross value of the sportswear you sold in 1944?

A. About three hundred thousand.

Q. This is Government's Exhibit No. 4 [handing]. See if on page 5 you see your signature and identify it?

A. Yes, that is it.

Mr. KILGORE. Mr. Bergson, your witness.

Cross-examination by Mr. BERGSON:

Q. How many salesmen did you say you have, Mr. Rubin?

A. About five.

Q. Do they all sell from samples?

A. Yes.

Q. And you make up your line at the beginning of the season?

A. Yes.

Q. You have your stock ready at that time when you make up your line?

A. No.

Q. You have your woolens?

A. Oh, that is right.

Q. You have all your piecegoods there?

A. Yes.

Q. And make up your samples and then send your men out to get orders?

A. Yes.

Q. Do you make up stuff for stock too?

A. No.

159 Q. Just make up your orders?

A. That is right.

Mr. BERGSON. That is all.

Mr. MALLOY. That will be all, Mr. Rubin. Mr. Henry Webber.

The COURT. May I just confer with counsel for a moment?

[Conference at the bench.]

HENRY WEBBER, Sworn.

Direct Examination by Mr. MALLOY:

Q. What is your full name?

A. Henry Webber.

Q. Where do you live, Mr. Webber?

A. 10 Wilmore Street, Mattapan.

Q. What is your business?

A. Contracting sportswear.

Q. How long have you been in that business?

A. About 17 years.

The COURT. Contractor in sportswear?

The WITNESS. Yes.

Q. Are you doing business for yourself or are you associated with someone else?

A. Contracting.

Q. Is anyone associated with you in your business?

A. I am now by myself.

Q. How long have you been doing business on your own?

A. May 1st this year.

Q. Whom were you associated with before that time?

A. Isaac Shapiro of Quincy.

160 Q. Did you associate with him in a partnership?

A. Yes.

Q. Did you have a trade name for your partnership?

A. S. & W.

Q. S. & W. Sportswear?

A. Yes.

Q. Where was the place of business of the S. & W. Sportswear Company?

A. At first 830 Washington Street and then 23 Beach Street since 1940.

Q. And the S. & W. Sportswear Company was doing business in 1944?

A. Yes.

The COURT. And 1945?

The WITNESS. '45.

Q. And 1945. How many machines, sewing machines did your own in 1944?

A. 31 machines but not all was working.

Q. And how many men did you employ?

A. I had about 20 girls and 3 men.

Q. In March, 1944 were you approached by any representative of the Women's Sportswear Association?

A. Yes.

Q. Asking you to join the Association?

A. Yes.

Q. Who so approached you?

A. A few of them like Kaufman and Mr. Cagan. And I joined them, too.

Q. What did Mr. Kaufman say to you about the Association?

A. It's good to belong.

Q. And what reasons did he give?

A. To be together.

Q. That is, what the Association would do for you?

A. No, not exactly, he didn't say nothing. He says it's up to me to come in and see. He says it's up to me to
161 come in and see what we can do.

Q. Mr. Webber, I hand you a two-page document and ask you whether you can recognize it?

A. Yes, I signed it.

Q. What is that?

A. When I received a summons a couple of years ago I walked over to—

The COURT. No, what is that?

Q. What is this document? Is that a statement that you made?

A. Yes.

Q. I direct your attention to page 2. Is that your signature?

A. Yes.

Q. Now, then, I will ask you if, in using that document to refresh your recollection, you can state what Mr. Kaufman told you the Association would do for you?

A. [After perusing.] That is right.

Q. What is it? What is the answer?

A. The answer is just what I said was true.

The COURT. What did you say?

The WITNESS. I said he told me it is desirable for all contractors to be together in the Association in case prices will come down after the war.

Q. Whose prices?

A. Prices for making garments.

Q. Who according to your recollection, established those prices that the contractor is interested in? Who gave you your prices?

A. We established our prices ourselves.

Q. Who pays you your price?

A. The jobber.

162 Q. Did you join the Association?

A. I joined the Association.

Q. Did you make any payments to the Association?

A. I paid $10 at first.

Q. To whom?

A. To the Association at a meeting in Mr. What's-his-name's office.

The COURT. Rosenberg's?

The WITNESS. Rosenberg's office.

Q. Did you attend any meetings?

A. I did.

Q. Of the Association?

A. I did.

Q. How many meetings did you attend?

A. About three or four meetings.

Q. What months were those meetings held in?

A. This is something I cannot remember. That is some times in 1944, in the fall.

Q. You joined in March?

A. Yes.

Q. You attended three or four meetings after you joined?

A. After I joined.

Q. Do you recall who was present at the meetings you attended?

A. Kaufman.

The COURT. Who was that?

The WITNESS. Kaufman.

Q. Who else?

A. Kaufman was president.

Q. He was president?

A. Yes.

Q. Who attended the meetings?

A. There was quite a few.

Q. Do you remember any of them by name?

163 A. Keshen, Cagan, myself, and a few others that I cannot recollect their names.

Q. How many were there in all about?

A. About seven or eight.

Q. Now I will ask you again to refer to your statement and see if you can refresh your recollection about how many did attend the meetings at which you were present.

A. [After perusing.] Mover was there. I forgot him.

The COURT. Have you looked at your statement now?

Q. About how many—

The COURT. Wait just a minute. Have you looked at your statement?

The WITNESS. [After perusing.] There was about 21 contractors meeting that belonged to the Association. There was two meetings, sometimes ten or twelve, sometimes more, sometimes eight to, the meetings that I attended there.

164 Q. What subjects were discussed at the meetings you attended?

A. The subject that was discussed at first was how to take in members, to have all the contractors in their association.

Q. Do you recall any other subjects of discussions?

A. Discussion about prices, whether someone is working for less than the other, and—

Q. Did the members present state what prices they were obtaining from jobbers?

A. They did.

Q. Who took part in those discussions?

A. In that association there were two different classes, those that worked jackets and those that worked skirts. I worked skirts. I didn't work—I never worked on jackets, so there was all the time discussion more of jackets than of skirts because there were probably few skirt makers attended those meetings.

Q. At that time, Mr. Webber, for what jobber were you doing stitching

A. Standard.

Q. Standard Stitching?

A. Standard Sportswear.

Q. Any others?

A. No.

Q. You say you only attended three or four meetings?

A. I just attended there for about April or May, and I stopped going.

Q. And what further relations did you have with the Women's Sportswear Association after that time?

A. Nothing.

Q. How many payments did you make to the Association?

A. I didn't pay nothing at that time.

165 Q. Except the initiation fee?

A. Except that ten dollars.

Q. Did you ever pay any dues?

A. No. They decided the dues against my pocket. It was too much for me to pay dues so I dropped out.

Q. What dues were established by the Association?
A. $15 a month.
Q. Did you signify your intention of dropping out to the Association?
A. No. I just dropped out.
The COURT. Where is your place of business?
The WITNESS. 23 Beach Street.
Q. Did you ever rejoin the Association?
A. I did rejoin the Association after I had a strike for about three weeks.
Q. When was that?
A. That was that year. The month I don't remember, but I know it was some times around that day, October 7th, I think it was 1944.
Q. What connection did your joining the Association have with your strike?
A. After I was struck for about three weeks, at first it was a matter of rejoining back to the Association, and my partner very much objected to it, and being as part of the business I didn't go there. In a nice day sometimes the people come back to work at an increase of 3 cents a skirt, but before it was any talk about increase it was only talked to me I should go back to the association.
Q. Who talked to you about that?
A. Kaufman, Segal, for the union connections.
Q. What did you do about going back?
A. I did not go back until the people start to
166 work. When the people start to work my partner said he had to finish 4,000 skirts, so I took a $50 check to join the union, and my partner come out and very much objected, so I dropped the $50 and didn't go there again.
The COURT. What did you do with the $50?
The WITNESS. I gave it to the Association.
Q. How long have you employed union labor?
A. All the time.
Q. What year did you start employing union labor?
A. Since I am in the business. I never employed non-union, other than union labor.
Q. Did you have an agreement with the union?
A. Yes, sir.
Q. What union?
A. International Garment Workers.
Mr. MALLOY. You may inquire.

Cross-Examination by Mr. BERGSON:

Q. Outside—
A. I am a little hard of hearing.
Q. Except for some general talk about what prices the different men were getting from the different jobbers was

there any action taken about prices at any of those meetings?

A. No. Everybody got paid well at that time.

Q. And all you had was just a discussion and talk among the members as to what they were getting?

A. That was my point of view—

Q. Just answer the question, will you, please?

167 When you joined in the early part of 1944 and you went to one or two meetings—

The Court. Went to three or four meetings.

Q. Three or four meetings, yes,—at those meetings there was some discussion and there was some talk about what prices the different men were getting for their work?

A. Yes, sir.

Q. And that is all that took place at all, just talk about that?

A. Yes, sir.

Q. Were you ever told what prices you must charge?

A. No.

Q. Did the Association in any way attempt to interfere with you and your jobber as to what prices you would get?

A. Not when I belonged in there.

Q. And at any time after that did it interfere with you, the Association interfere with you?

A. After that they wanted to drop me out altogether because I belonged in there. The only good thing about it, there wasn't any other contractor that could take work, only those that belonged to the organization. Otherwise I would probably have dropped out. According to the argument they shouldn't give me no work—

Q. Did you understand my question?

The Court. Better read it again.

[Last question read.]

The Court. Did they interfere with you?

The Witness. No.

Mr. Bergson. That is all.

168 Harry Lipof, Sworn.

Direct Examination by Mr. Kilgore:

Q. State your full name, Mr. Lipof?

A. Harry Lipof.

Q. And your address?

A. 18 Brookview Street, Dorchester.

Q. Are you doing business in the sportswear manufacture?

A. Yes, sir.

Q. What is the name of that business?

A. Elleny Sportswear.

The COURT. Company?
The WITNESS. Yes, sir.
The COURT. What is that, a corporation?
The WITNESS. It is a corporation now.
The COURT. What was it in 1944?
The WITNESS. Partnership.
The COURT. Were you one of the partners?
The WITNESS. Yes, sir.
The COURT. It was a partnership in 1944 and 1945, and you were one of the partners?
The WITNESS. Yes, sir.
Q. How long have you been in the sportswear business?
A. 7 or 8 years.
Q. Have you always been in the manufacturing end of the sportswear?
A. Yes, sir.
Q. In 1944—
The COURT. In other words, you were one of the contractors, were you?
169 The WITNESS. No; manufacturing or jobbing.
Q. In 1944 did the corporation maintain sales offices and salesmen?
A. Yes; we had a sales office in New York.
The COURT. How many?
The WITNESS. A sales office in New York and a man covering New England.
Q. What territory did the salesman cover?
The COURT. New England he said.
A. Just New England.
Q. Just New England?
A. Yes.
The COURT. The six New England states?
The WITNESS. Yes, sir.
Q. What were the names of the contractors who did your work in 1944?
A. Barney Eisher.
Q. He is the only—
The COURT. Is he the only contractor?
The WITNESS. There was one other, Up-To-Date Sportswear.
Q. Can you give us an approximation of the gross value of your goods produced in 1944?
A. Oh, about $150,000.
Q. How much of that was shipped out of the state of Massachusetts?
A. About 90 per cent.
Q. Can you give us approximately the cost of stitching in relation to the total cost of the garment?

A. Between one-quarter and one-third.

Q. I will ask you to look at Government's Exhibit
170 No. 4, and see if you identify your signature?

A. Yes, sir.

Q. On page 5, it is opposite the Elleny Sportswear Company?

A. That is right.

Cross-examination by Mr. Bergson:

Q. Your salesman traveled throughout New England and New York State?

A. Well, I took care of most of that territory myself.

Q. Well, you had a salesman, didn't you?

A. I was it.

The Court. He was the salesman.

Q. Oh, you were the salesman. Well, when you went out to solicit orders, you carried samples, didn't you?

A. Yes, sir.

Q. And those samples were made from piece goods that you had in stock?

A. Yes.

Q. And did you carry an inventory of piece goods?

A. Yes.

Q. In your place of business?

A. That is right; yes, sir.

Q. And it is a fact, isn't it, that at all times you maintained an inventory of piece goods in your place of business, isn't it, in 1944?

A. Well, not necessarily.

Q. Well, you would have piece goods for some time in your place before you would ship out the finished product, wouldn't you?

A. Depending on how fast it came in.

Q. But you didn't solicit your orders until you had your piece goods? Isn't that a fact?

A. No, it is not.

Q. Well, you had piece goods before you solicited your orders?

171 A. Sometimes; other times we anticipated receiving piece goods.

Q. That is, you anticipated receiving more piece goods?

A. That is true.

Q. Of the same kind? You always had samples, didn't you?

A. Yes, sir.

Q. So those samples were made from the piece goods that you had in the first instance?

A. Yes, sir.

Q. And then you sometimes repeated your orders on piece goods?

A. Yes, sir.

Q. Did you carry an inventory of finished garments also?

A. Yes, sir.

Q. Did you make up stock?

A. On some occasions; yes, sir.

Q. And you carried that in your place of business?

A. Yes, sir.

Mr. BERGSON. That is all.

The COURT. Did you have any further questions?

Re-direct Examination by Mr. KILGORE:

Q. In 1944 what size inventory did you carry on finished garments?

Mr. BERGSON. How much what?

The COURT. How much of an inventory on finished garments did he carry?

A. Well, that would depend on the season and the amount of goods.

The COURT. Now, we are now in 1944 and 1945. Take all the seasons in the year 1944. What percentage of the finished garments that you actually finished and sold to
172 the trade-did you carry in inventory?

The COURT. Well, at most of the time, sir, I would anticipate the business I would obtain and would go ahead.

The COURT. Go ahead?

The WITNESS. Yes. We had to say what part of it would be called stock.

The COURT. Were the orders that you placed with the mills for the goods that went into your garments—were those orders affected at all by the orders that you got from your trade?

The WITNESS. I don't understand that.

The COURT. Maybe I had better make it a little more plain. Well, assuming that you as a salesman, covering your territory, received orders for a certain number of garments of certain cut and type and style. Would that in any way increase the amount of piece goods that you would order as a result of getting those orders?

The WITNESS. Yes, sir.

The COURT. It would? You would order piece goods to make up those orders?

The WITNESS. True.

The COURT. And you did not have sufficient inventory in your place of business to take care of all of those orders?

The WITNESS. No.

173 The COURT. All right.

Mr. BERGSON. Just a minute. I think I would like to clarify that situation.

The COURT. All right.

Re-cross Examination by Mr. BERGSON:

Q. Mr. Lipof, at the beginning of the season you would buy piece goods, wouldn't you?

A. Yes, sir.

Q. And you would place orders based upon either the amount of piece goods to which you were entitled at that time, or upon the expectation of the amount of business that you could do? Isn't that a fact?

A. Yes.

Q. Then, when you got those piece goods, you would then make up your samples? Is that right?

A. Not quite. The samples would be made ahead of time.

Q. Out of what did you make the samples?

A. Well, the fabrics were more or less standardized.

Q. What is that?

A. The fabrics were more or less standardized.

Q. Well, where did you get the fabric out of which to make the samples?

A. We would run the same fabric from season to season.

Q. You would run the same fabric from season to season?

A. Yes, sir.

Q. Then you had some fabrics that were left over
174 from one season to another?

A. Occasionally.

Q. Was that your usual practice?

A. No, sir.

Q. Your usual practice was as I described it, wasn't it, to buy your piece goods, and then when they came in, to make up your samples? Isn't that your usual practice?

A. Well, depending upon conditions.

Q. Well, isn't that the usual practice in the trade, to get the piece goods, then make up samples, and then go out and solicit orders?

A. In 1944, yes, that was the usual practice.

Q. Yes. And then if you found that you got more orders than what you had piece goods for, then you tried to repeat your orders for piece goods, if you could get them?

A. Yes, sir.

Q. Isn't that the fact?

A. Yes, sir.

Mr. BERGSON. That is all.

Mr. KILGORE. That will be all, Mr. Lipof.

SYDNEY MCKINLEY AIKON, Sworn.

Direct Examination by Mr. MALLOY:

Q. What is your full name, Mr. Alkon?
A. Sydney McKinley Alkon.
Q. Where do you live, Mr. Alkon?
A. 25 Nazing Street in Roxbury.
Q. What is your business?
A. Sportswear manufacturing.
Q. With what concern are you connected?
A. Kay Murray, Inc.
Q. Are you an officer in that company?
A. I am.
175 Q. What position do you hold?
A. Vice-president.
Q. Also a stockholder?
A. Yes, sir.
Q. How long have you been connected with the Kay Murray Company?
A. Since its origination about five years ago.
Q. How long have you been in the sportswear business?
A. About five years.
Q. Where is your place of business located?
A. 515 Washington Street.
Q. Boston?
A. Boston.
Q. Do you maintain any sales offices?
A. I do.
Q. Where are your sales offices located?
A. One in New York, one in Chicago, one in San Francisco.
Q. Do you employ any salesmen who travel throughout the United States in addition to those in your offices?
A. Yes.
Q. How many such salesmen do you employ?
A. Two.
The COURT. What territory do they cover?
The WITNESS. Illinois, Indiana, Missouri, North and South Dakota, part of Wisconsin.
The COURT. Is that all the territory they cover?
The WITNESS. Well, the other offices cover the rest of the territory.
The COURT. What office?
The WITNESS. The New York office covers New York State, P[illegible]sylvania.
The Co[illegible]. The salesmen in your employ?
The WITNESS. Yes, sir.

176 Q. Where do you purchase your cloth?
A. Different mills.
Q. Where are the mills located?
A. Some in New England, some in New York, some Wisconsin.
Q. What percentage of the cloth which you use comes from mills located outside the Commonwealth of Massachusetts?
A. Oh, I would say 75, 80 per cent.
Q. What percentage of your finished sportswear is sold outside the Commonwealth of Massachusetts?
A. I would say 75 or 80 per cent.
Q. What was the gross amount of your business in 1944 and 1945?
A. About $400,000.
Q. What contractors did you employ in 1944 and 1945?
A. V. & B. Sportswear Company.
Q. Where are they located?
A. 515 Washington Street.
Q. Do you know who the owners of that company are?
A. I do. The Fredericos.
Q. What are their first names?
A. William and, I think, James.
Q. Again, late in September or the early part of 1944, did you participate, Mr. Alkan, in any conferences with representatives of the Women's Sportswear Association about the signing of an agreement between the jobbers and the Sportswear Association?
A. I think so.
Q. Where? First, when did such conference take place?
The Court. Where and when?
The Witness. At, I think, around September
177 sometime in 515 Washington Street, the contractors'.
Mr. Bergson. What is that?
The Court. 515 Washington Street. At whose place of business?
The Witness. V. & B. Sportswear.
Q. Who attended that conference?
A. I don't remember whether—I just don't remember who was there offhand.
The Court. Were you there?
The Witness. I was there, yes.
Q. What other jobbers were present?
A. The only one I work with.
Q. I am talking about jobbers. Manufacturers?
A. Nobody. Just ourselves.

Q. You mean you just had a conference with the V. & B. Sportswear Company?

A. That is right.

Q. About your signing an agreement?

A. That is right.

Q. And the only ones present were the Fredericos?

A. As far as I can remember, yes.

Q. What representation did the Fredericos make about the agreement?

Mr. BERGSON. That is limited only to Frederico.

A. I don't quite get the question.

Q. What statement did the Fredericos make to you about the proposed agreement?

178 A. Well, they were getting together and making up an agreement and would I sign.

Q. Did you ever have any conferences with Mr. Rosenberg about an agreement?

A. No.

Q. I show you Government's Exhibit 4, Mr. Alkan, and direct your attention to page 4 and ask you if you can identify your signature on that instrument?

A. That is mine.

Q. You signed for—

A. Kay Murray Sportswear.

Mr. MALLOY. You may inquire.

Cross-examination by Mr. BERGSON:

Q. I understand you to say that you maintain an office also in San Francisco?

A. That is right.

Q. It is a fact, isn't it, Mr. Alkan, that your office in San Francisco in selling your merchandise has to compete with merchandise of the same kind that is manufactured in other markets?

A. Yes.

Q. And Los Angeles was one of those markets?

A. I couldn't tell you.

Q. You don't know of your own knowledge?

A. No.

Q. Do you buy the raw material?

A. I do.

Q. Is it your practice to have your salesmen equipped with samples when they go out to take orders?

A. Certainly.

The COURT. Yes?

The WITNESS. Yes.

179 Q. Just keep your voice up, will you?

A. Okay.

Q. It is your practice to buy piecegoods first and then have the samples made up from the piecegoods?

A. Well, at times I buy piecegoods and have goods in the place, and at times make samples up. As the goods come in, piecegoods, I make samples up.

Q. In other words, you always keep an inventory of piecegoods in your place?

A. Keep a certain amount of inventory.

Q. On hand?

A. Yes.

Q. And when you get new fabrics, if you are shown new fabrics you order them, and when they come in you make samples out of the fabrics?

A. At times I make samples and at other times I make swatches.

The Court. A swatch the Court recognizes as being a sample.

The Witness. It is a piece of the goods, of the material.

Q. The sample I referred to is the made-up article.

A. Certainly, you make it up.

Q. A pair of slacks, or a jacket, or a skirt?

A. He may have a pair of slacks with him, then we show him the jacket and quality of the piece material and tell him such-and-such style comes in such-and-such goods.

Q. But you always sell from material you have on hand?

A. Either that or I order.

Q. You place your orders with the mills in the
180 first instance for the amount that you intend to sell?

A. We keep on working and then worry whether we are going to get the goods or not.

The Court. But the amount of goods that you do make and order is affected by the amount of orders that you get?

The Witness. We eventually ship.

Q. That you eventually ship?

A. Yes.

Q. In the first instance, you have an idea of how much volume you expect to do and place your orders accordingly?

A. Not necessarily. The volume, we try to do as big volume as we can, and as the goods come in we make them up and ship them out.

Q. And also you do buy materials in advance of orders?

A. Yes.

Q. That is what happens with the greater part of your business—

A. No.

Q. —where your purchase goods in advance of your orders?

A. Not all the time.
Q. Is it 50 per cent?
A. That I couldn't answer. I don't know figures.
Mr. Bergson. All right.
The Court. Do you care to ask any more questions?
Mr. Malloy. No.

181 Louis Maltzman, sworn.

Direct Examination by Mr. Kilgore:

Q. State your full name, please.
A. Louis Maltzman.
Q. Your address?
A. 118 Addington Road, Brookline.
Q. What is your occupation, Mr. Maltzman?
A. Manufacturer.
Q. What is the name of your concern?
A. Simmons Sportswear.
Q. Is that a partnership or corporation?
A. Corporation.
Q. What is your official connection with that concern?
A. Treasurer.
Q. How long have you been treasurer of that?
A. There was times that—I was in partnership,—I mean not partnership,—individual, after 1939.
The Court. Then you were incorporated?
The Witness. Yes, sir.
The Court. Then you became treasurer of the corporation?
The Witness. Yes, sir.
The Court. In 1944 and 1945 it was a corporation?
The Witness. Yes, sir.
The Court. Still is, is it not?
The Witness. Yes, sir.
The Court. You are the treasurer?
The Witness. Yes, sir.
Q. Does the Simmons Sportswear maintain sales offices?
A. Sales offices, yes, sir.
Q. Where?
A. New York City.
182 Q. You maintain salesmen out on the road?
A. Yes, sir.
Q. How many?
A. Nine or ten. I think about ten.
Q. What territories do they cover?
A. Middle and far West and part of the South and all through Pennsylvania, New York State.

Q. Do you have salesmen covering the New England territory?

A. No, not at the present time.

Q. From what mills do you purchase your goods, cloth?

A. Oh, from different mills.

Q. Could you give us the name of the state?

A. Part in New York State, Pennsylvania, some from the Middle West.

Q. And what percentage is the cloth that comes from mills located in Massachusetts?

A. About 10 to 15 per cent; about 15 per cent.

Q. What percentage of the finished garments that you sell are shipped outside the State of Massachusetts?

A. From 90 to 95 per cent.

Q. What was your gross business, sales, in 1944?

A. A little over 800,000.

Q. That is, for 1944?

A. Yes.

Q. What contractor does your work, Mr. Maltzman?

A. Gilman Sportswear, most of it, and some Better Maid.

The Court. Is that "Better Maid Sportswear," they call it?

The Witness. Yes, sir.

The Court. Gilman Sportswear and Better Maid?

The Witness. Gilman Sportswear and Better Maid.

183 Q. I ask you to look at page 5 of Government's Exhibit 4, and see if you can identify your signature? [Witness indicates.]

Q. It is opposite "Simmons Sportswear Company"?

A. Yes, sir. Let me see that.

The Court. Wait just a moment. He wants to examine that again.

Q. Is this your signature?

A. This is my signature, but I don't remember now—

Q. Do you not recall having signed the agreement?

A. That is 1944. I don't remember.

Mr. Kilgore. The agreement is in evidence.

The Court. Is that your signature, Mr. Maltzman?

The Witness. Yes, sir.

Mr. Kilgore. That is all.

Cross-exxamination by Mr. Bergson:

Q. Who is Gilman Sportswear?

A. A contractor.

Q. What is the name of the contractor?

A. Gilman Sportswear.

Q. The name of the contractor isn't Gilman Sportswear?

A. The name is Gilman.

Q. What is his first name?

A. I can't recall now. I don't remember. I know his last name is Gilman.

Q. You don't know his first name?

A. No.

Q. But it is a Mr. Gilman doing business as Gilman Sportswear?

A. Yes, sir.

184 Q. Now, who is the Better Maid?

A. Fields, Mrs. Fields.

The COURT. How do you spell it?

The WITNESS. F-i-e-l-d-s.

The COURT. Mrs. Fields.

The WITNESS. She don't go by that name. She always goes by the name "Better Maid".

The COURT. That is a trade name?

The WITNESS. Yes, sir.

Q. That is a woman, Mrs. Fields?

A. Yes, sir.

Q. And the other one is a Mr. Gilman?

A. Yes.

Q. Do you buy piece goods for your business?

A. Yes.

Q. And is it your practice to buy the piece goods and then send out samples and solicit orders?

A. No, not necessarily.

Q. What?

A. Not necessarily. Most of the time I buy sample cuts.

Q. You buy sample cuts?

A. Yes; novelty goods.

Q. And then you go out and solicit by order. Do your salesmen cover practically the whole United States?

A. Most of it.

Q. And do your goods come in competition with goods that are made in other markets?

A. Yes.

Q. Can you sell in competition with the other markets?

A. Yes.

Mr. BERGSON. That is all.

The COURT. I just want to ask one or two questions. As a matter of fact, you don't do anything at all with this stuff?

The WITNESS. We do cutting on the premises.

185 The COURT. Oh, you cut?

The WITNESS. Yes, on the premises, making up patterns.

The Court. As I understand it you said you send the goods to one of the people who are termed here as contractors, you send it to their place of business?

The Witness. All cut up.

The Court. All cut up?

The Witness. All cut up.

The Court. And then they sew them?

The Witness. They sew them.

The Court. Put buttons on, put in buttonholes and put on ornaments?

The Witness. Yes, sir.

The Court. They are cut on your premises?

The Witness. Cut on our premises.

The Court. How many people do you employ?

The Witness. Fifteen or sixteen.

The Court. How many of those are employed doing anything to garments. I suppose they are all employed on garments, but I mean in cutting.

The Witness. In the cutting, the cutters, three.

The Court. The other people you have there are bookkeepers and shippers.

The Witness. Shippers.

The Court. So that only three of your people have anything to do—

186 The Witness. And a designer sample maker. We have a samplemaker.

The Court. A designer?

The Witness. A designer.

The Court. And three people who cut?

The Witness. Yes, and there is people who bundle.

The Court. The shipper?

The Witness. Yes.

The Court. But the greater part of the work that is done on the garment is done by the so-called contractor?

The Witness. Yes, sir.

The Court. And you term yourself a manufacturer and not a jobber? You are a manufacturer?

The Court. That is all.

Mr. Bergson: May it appear at this time, if your Honor pleases, that even these two contractors are not named as parties-defendant in this action?

The Court. What do you say as to what?

Mr. Malloy. I don't think it is at all material.

The Court. Are they named in the complaint?

Mr. Malloy. I don't believe they are, your Honor.

The Court. Let us look at it and find out.

Mr. Malloy. I am quite sure that they are not. They are not named as parties-defendant.

187 Mr. Bergson. I move prior testimony be stricken from the record.

The Court. No. It may be that the contractors are parties-defendant to the action.

Harry Fishman, sworn.

Direct Examination by Mr. Malloy

Q. What is your full name?
A. Harry Fishman.
Q. Where is your residence?
A. 29 Highland Street, Revere. That is where I live.
Q. What business are you in, Mr. Fishman?
A. I am a contractor, sportswear.
Q. Where is your place of business?
A. 631 Washington Street.
Q. Are you in business for yourself?
A. Yes, sir.
Q. How long have you been in business?
A. Oh, since 1934, 1936.
Q. Do you employ stitchers?
A. Yes, sir.
Q. Are those stitchers affiliated with any union?
A. Yes, sir.
Q. With what union?
A. International Garment Workers.
Q. How long have you employed union help?
A. Most of my time.
Q. Beginning about what time?
A. I should say since 1936,—1938. 1938. Most of the time at any rate.
Q. Do you own any sewing machines?
A. Yes, sir.
Q. Now, how many do you have?
A. About thirty.
Q. How many employees did you have in 1944 and 1945?
A. From 40 to 42. It all depends on the time.

188 The Court. Are there times in the year that you don't have as many as others?

The Witness. Yes, sir. Sometimes some of them are sick or leaving their jobs.

The Court. But ordinarily you employ,—

The Witness. 40 to 42.

Q. In 1944 did any representative of the Women's Sportswear Manufacturers Association ask you to join the Association?

A. Well, I wouldn't know whether it was a representative or not, but a neighbor of mine in the same building, he was a member of the Association, he had been asking me quite a few times about joining.

Q. What was his name?
A. I. E. Kaufman.
Q. Did you join the Association?
A. Not then.
Q. Did you join it at all?
A. I think it was in 1945. At that time I was approached by him again, as I remember, and I had a little difficulty in the shop, so the union advised me it would be much more advisable, easier to deal with people as a group than an individual.
Q. Did you join the Association?
A. I just put in the Association fee one time, and the second time I was at the meeting, and that is all.
Q. What was the amount you paid?
A. Fifty dollars.
Q. To whom did you pay it?
A. Mr. Rosenberg.
Q. Did you attend any of the Association meetings?
189 A. Those were the two times.
Q. You attended two times?
A. Two times.
Q. Who were present at the meetings you attended?
A. I wouldn't mention all the names.
The Court. You would if you could?
The Witness. Eight or ten people anyway.
Q. Can you recall the name of anyone?
A. First of all was Rosenberg, Kaufman, Cagan, Mr. Mover, I think a fellow by the name of Swartz.
Q. After you had attended the Association and paid your initiation fee did any representative of the Association call on you?
A. After a while, I think about three or four weeks later, I told him I am not going to belong there.
Q. Did any representative of the Association come around to your place of business?
A. Yes, once.
Q. What was that occasion?
A. That was Mr. Cagan, Mr. Mover, asking me the reason why I don't join the Association.
The Court. Was this after you were in?
The Witness. Yes, after I was in and went out; the second time.
Q. Mr. Fishman, did some girl from the Association call on you?
A. Yes, sir.
Q. What did she do when she got to your place of business?

A. Well, she came in to find out—

Mr. BERGSON. What did she do?

190 The WITNESS. She came to ask how much—

Mr. BERGSON. No, no. What did she do?

The WITNESS. That is what I want to tell you. I can't tell you unless you let me. She came in to ask—

The COURT. Just a moment, please. First, I think we had better identify the girl.

Q. Who came to see you?

A. The girl that worked for the office of the Association, for Mr. Rosenberg.

Q. Do you recall her name?

A. I don't know her name.

The COURT. Have you seen her in the office?

The WITNESS. Yes.

The COURT. In the office of the Sportswear Association?

The WITNESS. That is right.

The COURT. You knew that she was working for Mr. Rosenberg?

The WITNESS. As far as I could find out she was working there.

Q. What did she do?

Mr. BERGSON. I pray your Honor's judgment.

The COURT. You object to any testimony concerning this?

Mr. BERGSON. Sure, any statement that she made.

The COURT. As not having any binding effect on this organization. Why isn't that so?

Mr. MALLOY. If she were the duly authorized employee of the Association, any activities or representation she made would bind the Association.

The COURT. Not necessarily.

191 Mr. MALLOY. This witness is a defendant and I should think the Government would be entitled to great latitude in examining this witness. He is obviously not particularly friendly toward the Government.

Mr. BERGSON. He hasn't shown any evidence of hostility.

The COURT. Under our procedure of course he may have latitude in cross-examination.

Mr. BERGSON. But it also appears, if your Honor pleases, that at the time of this interview, alleged interview, he says he had dropped out of the Association.

The COURT. Dropped out of the Association, and then I understand some young lady came in.

Mr. MALLOY. At this time he had not yet dropped out of the Association.

The COURT. You were in the Association?

The WITNESS. Yes, but at the second time, there was supposed to be another meeting, this girl came in.

The COURT. Just tell us she came in.

The WITNESS. That is right.

Q. You have been asked what did this young lady do.

A. She asked—

The COURT. No, not what she said. What did she do?

The WITNESS. She didn't do nothing.

Q. She came to your place of business?

A. Yes, sir.

Q. Did you have a conversation with her?

192 A. She came in and asked me—if I can't tell it—she came in to ask me how much—

Mr. BERGSON. No, please, Mr. Fishman.

The COURT. I am going to hear the evidence and if it isn't in my judgment admissible I will strike it out.

Mr. BERGSON. All right.

The COURT. Go ahead and tell us.

A. She came in to ask how much of a check I received from the jobber last week.

Q. Yes. And what did you say?

A. I really didn't know what it is all about then because I—

The COURT. Leave that out. What did you say to her?

The WITNESS. Really, I told her how much I collected from that jobber at that time.

Q. You gave her the amount you collected from the jobber?

A. That is right.

The COURT. I am going to exclude the evidence as to the young lady.

Mr. MALLOY. May I have an exception?

The COURT. I mean the conversation with the young lady. I am going to exclude it.

Mr. MALLOY. You may inquire.

Mr. BERGSON. No questions.

193 ERNEST DONATH, Sworn.

Direct Examination by Mr. KILGORE

Q. Will you state your full name, please?

A. Ernest Donath.

Q. And your address, sir?

A. 83 Blake Road, Brookline, Mass.

Q. What is your occupation, Mr. Donath?

A. Business man.

The COURT. Yes, but what business? What kind of business?

The WITNESS. Sportswear business.

The COURT. In what capacity?

The WITNESS. At the present time?

The Court. Well, in 1944 and 1945, were you engaged in this business?

The Witness. Yes. I think at that time I was a partner in that particular business.

The Court. A partner in what business?

The Witness. On Sports Modes.

Q. Sport-Modes, Incorporated?

A. Well, if it was incorporated, then I owned a certain amount of shares in that particular business.

The Court. Well now, let's see if you cannot remember back. Let's find out first, what business are you in today?

The Witness. I am in my own business.

The Court. In what business?

The Witness. Sportswear business, but I own it myself.

The Court. And what is the name of it?

194 The Witness. Ernest Donath, Incorporated.

The Court. But back in 1944 and 1945, '44 first, were you an officer of Sport-Modes?

The Witness. In 1944 I think it was Sport-Modes, Incorporated; and in 1945 I think it was a partnership.

The Court. All right. In 1944 it was a corporation?

The Witness. Yes, sir.

The Court. And were you an officer in that corporation?

The Witness. Yes; I was president.

The Court. President and a stockholder?

The Witness. Yes, sir.

The Court. And in 1945 it was a partnership?

The Witness. Yes; I think it was changed to a partnership.

The Court. And you were one of the partners?

The Witness. Yes, sir.

Q. I will ask you to look at page 5 of Government Exhibit 4, and see if you will identify your signature?

A. That is my signature.

Q. Opposite the name "Sport-Modes"?

A. Yes.

Q. In 1944 did Sport-Modes maintain sales offices any place?

A. Yes, we had sales offices in New York, Chicago—

The Court. Where else?

The Witness. Chicago.

The Court. New York and where else?

The Witness. Chicago, Los Angeles.

195 Q. Did Sport-Modes maintain sales representatives out in the field?

A. We had, besides these officers, we had nine salesmen.

Q. They traveled in what territory?

A. Well, in their respective territories, such as, there

was a man that traveled out of St. Louis, a man that traveled out of Baltimore—

Q. Well, Mr. Donath, what territories did they cover as a group?

A. Well, between the salesmen and the sales office, the whole country was covered.

Q. From which office was cloth ordered that you used in manufacturing?

A. Well, it was ordered either in our New York office or in Boston.

Q. In 1944 and 1945?

A. Yes, sir.

The Court. Where did this cloth come from?

The Witness. Well, it come from various parts of the country. Some come from the Midwest, some from the South, some from New England.

The Court. Can you give us an estimate of what percentage of it came from outside of the Commonwealth of Massachusetts?

The Witness. I would say about 50 per cent of it.

The Court. You mean to say the other 50 per cent you bought in mills here in Massachusetts?

The Witness. Yes, sir.

The Court. What was it, woolen?

The Witness. Yes. We dealt in both woolens and 196 rayon and cottons.

The Court. Did you get rayon and cotton in Massachusetts?

The Witness. No. They are manufactured in the southern mills.

The Court. And what percentage of the wools did you get from Massachusetts?

The Witness. I would say about, of the 50 per cent of goods, of woolens, about 25 per cent came from New England.

The Court. Well now, what mills in particular?

The Witness. Well, Pacific Mills.

The Court. In Lawrence?

The Witness. In Lawrence. A. T. Jouillard—

The Court. That is outside of Massachusetts.

The Witness. Oh, in Massachusetts?

The Court. Yes.

The Witness. Pacific Mills—there is a mill down in East Douglas, Mass.

The Court. That woolen you got from the Pacific Mills and this other mill in East Douglas was some of your finer grade woolen?

The Witness. I would not say so. They are all good wools.

The COURT. Don't we manufacture in Massachusetts a little higher grade woolens than they do in these other states?

The WITNESS. No. Bottany is made in Passaic, New Jersey, and that is supposed to be a good mill.

197 Q. Mr. Donath, the amount of goods that were used by Sport-Modes coming from Massachusetts mills, did that go directly from the mill to your plant here in Boston, or did it go to New York?

A. It came to Boston. We received all our goods in Boston.

The COURT. You got all your shipments directly from mills?

The WITNESS. Yes, sir.

The COURT. None went through the agency in New York?

The WITNESS. Well, as they were a selling agency, I imagine it would come from the mill to us.

Q. In 1944 what do you approximate the sales by Sport-Modes?

A. 900,000 to a million.

Q. What percentage of that represents sales outside Massachusetts?

The COURT. Of finished goods?

A. Boston business amounted to about 40,000, that is all. The rest of it was all outside Massachusetts and New England.

Q. Did you do any stitching work at all? Did you do any in 1944?

A. No.

Q. What were the names of the contractors doing your work?

A. We had one contractor.

The COURT. Who was that?

The WITNESS. Century Manufacturing Company of Brockton, Mass.

Q. Is that a partnership? Was it a partnership?

198 A. I wouldn't know in 1944 whether it was or not; but there were two men there, and I don't know when they split up. It may have been 1944 or 1945.

Q. Would you give us their names?

A. A man by the name of Morris Isenberg and Jacob Weinberg.

Q. Before you signed this contract, Plaintiff's Exhibit No. 4, you were giving all your work to the contractors in Brockton?

A. Yes, sir.

The COURT. After you signed the contract, did you give it to anyone else? Any different?

The WITNESS. No.

The COURT. Still gave it to these contractors in Brockton?

The WITNESS. That is right.

Q. These same two men were still operating after you had signed the contract?

A. There was a split-up, I think, in 1945. Mr. Weinberg, I think, got out and started a plant in Brockton.

Q. You kept giving your business, though, to the Brockton contractor?

A. That is right.

Q. Was Mr. Morris Isenberg the one that you continued giving work to?

A. Yes, sir.

Q. Did any representative from the Women's Sportswear Manufacturers Association call on you relative to the contract?

A. At the time that I signed it, yes.

Q. Who called on you?

A. I think Mr. Rosenberg came out at that time, and I signed it.

199 Q. Did you speak to Mr. Isenberg concerning the contract?

A. No; I don't think I ever did.

Q. After signing it?

A. Well, I may have said that I had signed it, that particular contract.

Mr. KILGORE. That is all.

Cross-examination by Mr. BERGSON:

Q. Your goods are sold in competition with the goods manufactured in other markets?

A. Well, I did not sell it that way.

Q. What is that?

A. I didn't sell it that way. I just made my goods, and it was sold.

Q. Well, you made your goods and sold, and you sold it in competition with the goods that were made in other markets, didn't you?

A. Well, I had different merchandise. It was sold differently from anybody else, and I really did not have any competition.

Q. You really had no competition?

A. No.

The COURT. That is peculiar in that business, isn't it?

The WITNESS. No; there are a few that don't have any.

Q. How much of an inventory did the Sport-Modes keep in 1944?

A. All our goods was always in process. We always had orders way in advance.

Q. Yes, but how large an inventory did you keep in 1941, was what I asked you, Mr. Donath.

A. Well, what do you mean by inventory?

200 The Court. Inventory, I presume, of piece goods.

The Witness. We never had any. The minute it came in, we put it into work.

The Court. It never rested very long in your place of business at all, did it?

The Witness. No, sir.

Q. Was it due to the fact that there was a scarcity of piece goods at that time?

A. Well, I didn't get all the piece goods I wanted, but I took orders, and I had a certain production in this particular factory, and I couldn't sell any more than my production in that factory.

201 Q. In other words, you were able to sell all the piecegoods you could get?

A. No, I wouldn't say that. There were certain times when I didn't buy because my production was low. I only bought for my production.

The Court. You refer to production of the factory. By that you meant the factory in Brockton?

The Witness. Yes.

Q. Did you carry any on hand?

A. No.

Q. At no time?

A. No.

Mr. Bergson. That is all.

The Court. Any further questions?

Mr. Malloy. No, that is all.

The Court. I would like to inquire now whether or not these contractors referred to in the last witness' testimony, the contractors in Brockton, are named as defendants?

Mr. Malloy. Yes, sir.

Mr. Bergson. One of them is; the other is the dead man.

The Court. All right.

Saul S. Spiegel, Sworn.

Direct Examination by Mr. Malloy:

Q. Your full name, please?

A. Saul S. Spiegel.

Q. Where is your home?

A. 7 Tennis Road, Mattapan.

Q. What is your business, Mr. Spiegel?

A. Manufacturing sportswear.

202 Q. How long have you been in that business?

A. Three and one-half years.

Q. What company are you connected with?
A. Debby-Lou Sportswear, Inc.
Q. You became connected with that company about April, 1944?
A. That is right.
Q. In what capacity?
A. As vice-president.
Q. Was Mr. Lewis—
The Court. And you also owned some stock in there?
The Witness. Yes, sir.
Q. Was Mr. Lewis Gordon connected with the Debby-Lou Company at that time?
A. He was treasurer at that time.
Q. I show you Government's Exhibit 4, directing your attention to page 4 of that document, and ask you if you can identify Mr. Gordon's signature?
A. Yes, that is his signature.
Q. He is signing for what company?
A. For Debby-Lou.
Q. Mr. Gordon is now deceased?
A. That is right.
Q. In 1944, Mr. Spiegel, what contractors did your concern employ?
A. B. & F. Sportswear.
Q. Do you know who the owners of that company were?
A. The names of the owners?
Q. Yes.
A. Joe Feingold and Sam Barack. And Neil Sportswear and Cabot Sportswear.
Q. Did you have any sales offices in 1944?
A. We have.
Q. Located where?
A. New York, at 4—New York and Boston.
203 Q. Did you employ any salesmen?
A. We had six men.
Q. What territory did they cover?
A. From New York out towards the South, Middle West, and two of them covered the New England States.
Q. You went out as far as the Middle West?
A. I think as far as the Coast and the Middle West.
Q. To the Pacific Coast?
A. That is right.
Q. And down to the Gulf of Mexico?
A. That is right.
Q. Where did you purchase your cloth in 1944?
A. Purchased it in New York and Boston, both.
Q. Where were the mills located?
A. Scattered, all over.

Q. What percentage of the cloth came from the Commonwealth of Massachusetts?

A. I would say around 40 per cent of it.

Q. And what percentage of your finished goods were sold outside the Commonwealth of Massachusetts?

A. Well, of our total business I will say around 20 per cent.

Q. You mean you did 80 per cent of your business in Massachusetts?

A. Out of Massachusetts. 20 per cent in Massachusetts.

Q. What was your annual gross business in 1944 and 1945?

A. [Consulting paper.] In 1944, $1,100,000; 1945, $1,400,000.

The COURT. Is that volume kept up to the present day?

The WITNESS. '46 is around $2,000,000.

The COURT. Two million in 1946.

Mr. MALLOY: You may inquire.

204 Cross-examination by Mr. BERGSON:

Q. Who did you say your contractors were?

A. B. & F. Sportswear.

Q. Their names are what?

A. Joe—I don't believe they had anything to do with the Association. They were neutral. That I know of.

The COURT. He didn't ask you that.

A. Joe Feingold and Sam Barack were the names of them, I think.

Q. Who was the Neil Sportswear?

A. Harry Gordon.

Q. Harry Gordon?

A. That is right. Harry Gordon.

Q. Who was the Cabot Sportswear?

A. Cabot—all I know by name is Jerry.

Q. What?

A. Jerry. What his second name is I don't know.

Q. Did your concern, the Debby-Lou Sportswear Company, have any agreement with the union?

A. In 1944? Yes.

Q. Are you sure?

A. With the union, yes. Debby-Lou has.

Q. Debby-Lou had an agreement with the union?

A. Yes, sir. Just the cutting department.

Q. Just covering the cutting department?

A. The cutting department. We have a cutting department, and they are under the union. The rest of the department wasn't.

The COURT. Besides the cutters employed in your place of business there are not many other people who actually

take part in the manufacture of the garments, are there?

205 The WITNESS. No, there isn't, outside of the shippers and the office help.

The COURT. They ship them after the receipt?

The WITNESS. Yes.

The COURT. You have office workers and shippers?

The WITNESS. Yes, sir.

The COURT. And some cutters?

The WITNESS. Yes.

The COURT. The cutters were organized, you say?

The WITNESS. Yes.

Q. Did your concern carry an inventory during 1944?

A. Very little.

Q. How much was the inventory?

A. I don't know. The demand was much greater than the output. The demand itself was much greater than the output. We weren't able to keep up with the business. As goods rolled in it was cut up as fast as it came in.

The COURT. Returned to you in the form of finished garments and shipped out?

The WITNESS. That is right. Abnormal conditions.

Mr. BERGSON. That is all.

May it appear that none of these names that he has mentioned as contractors are among the defendants?

The COURT. I was just checking that.

Mr. MALLOY. That is true. The Government re-

206 gards that as immaterial.

The COURT. But you say you admit they do not appear?

Mr. MALLOY. No.

The COURT. That none of the names of the contractors he referred to appear as parties defendant?

Mr. MALLOY. Yes.

Mr. BERGSON. Therefore I move the testimony be stricken from the record.

The COURT. No, that testimony may stand but it is understood that none of the names mentioned of the contractors are parties to the agreement.

Mr. KILGORE. Mr. Berger.

GEORGE S. BERGER, Sworn.

Direct Examination by Mr. KILGORE:

Q. Will you state your full name, please?

A. George S. Berger.

Q. Your address?

A. 6 Franklin Gardens, Roxbury.

Q. Give us your occupation, please.
A. Manufacturer of children's and girls' sportswear.
Q. What is the name of the concern?
A. Franklin Sportswear Company.
Q. It is located where?
A. 116 Bedford Street, Boston.
Q. What type of business is it: partnership or corporation?
A. Partnership.
Q. Are you one of the partners?
A. Yes.
207 Q. Does the partnership maintain sales offices?
A. No, just sales office at the home office on Bedford Street.
Q. Do you have any salesmen?
A. Yes.
Q. Tell us what territories they cover?
A. Well, they cover New York, Pennsylvania, and Ohio.
Q. In 1944 is that true?
A. Yes.
Q. Where are the mills located in which you purchase the goods?
A. Well, all over. Rhode Island. There was one mill in West Virginia, and various other mills. There were some up in New Hampshire.
Q. Would you give us the percentage of the goods coming from mills outside the State that you used?
A. I got practically, probably, about 75 to 90 per cent of my goods outside of Massachusetts.
Q. What percentage of the total sportswear did you ship outside the State?
A. About 90 per cent.
Q. What was your gross annual business in the year 1944?
A. 200,000.
Q. I show you Exhibit No. 4 and ask you to identify your signature.
A. That is right.
Q. On page 5. What is the name?
A. Franklin Sportswear Company.
The Court. Did you sign it?
The Witness. Yes, sir.
The Court. For the partnership?
The Witness. Yes, sir.
208 The Court. All right.
Mr. Kilgore. Mr. Bergson, your witness.
The Court. By the way, who was your contractor in 1944?
The Witness. Morris Greenblat.
The Court. Where is he located?

The WITNESS. 105 Chauncy Street, Boston.

Mr. BERGSON. What is that? Morris Greenblat?

The COURT. Morris Greenblat. He did all the work for your organization?

The WITNESS. Yes.

The COURT. In 1944 and 1945?

The WITNESS. I never could find out whether he was a member.

The COURT. That isn't necessary. Morris Greenblat.

Mr. BERGSON. It appears he is not a defendant.

The COURT. All right.

Mr. MALLOY. He is not a defendant, your Honor, but I think evidence will show that he has been a member, at least at some time or other during the appropriate period. He is not named as a defendant.

The COURT. It may be noted he is not a party defendant to this suit—Morris Greenblat. All right.

Mr. BERGSON. No questions.

The COURT. That is all for tonight, gentlemen. We will adjourn now until 10 o'clock tomorrow morning.

[Adjourned, at 4 p. m., to 10 a. m., Friday, February 14, 1947.]

209

SECOND DAY

Court Room No. 2, Federal Bldg.,
Boston, Friday, Feb. 14, 1947
10 a. m.

PHILIP SHERMAN, sworn.

Direct examination by Mr. Malloy:

Q. What is your full name, Mr. Sherman?

A. Philip Sherman.

Q. Where do you live?

A. 41 Dwight Street, Brookline.

Q. What is your business?

A. Manufacturing sportswear.

Q. What company are you now connected with?

A. Sherman Classics.

Q. Is that a corporation?

A. Yes, sir.

Q. What position do you hold with the corporation?

A. I am the treasurer of the concern.

Q. How long have you been in the sportswear business?

A. Since 1942.

Q. In 1944, what company were you connected with?

A. The same company, but there was—we had to change the name on account of legal affairs.

Q. What was the name of your company in 1944?

A. Sherman Classics.

Q. Did you ever do business under the name of Kenniston Klassics?

A. Yes, sir.

Q. During what period of time did you do business as Kenniston Klassics?

210 A. 1942, '43, and some part of 1944.

Q. Where is your place of business, Mr. Sherman?

A. 15 Kneeland Street.

Q. Do you maintain any sales offices?

A. Yes, sir.

Q. Whereabouts?

A. Right now we have New York, 14th and Broadway.

Q. Do you employ any salesmen?

A. Yes, sir.

Q. What areas of the United States do your salesmen cover?

A. We have two men and they cover the entire New England States, also New York State.

Q. New England and New York State?

A. Yes. But the men in New York really service the entire country because they come in to buy in New York.

Q. Where do you buy your cloth?

A. More or less we buy in New York City at different agents, different mills.

Q. Do you place your orders for cloth with mill agents in New York City?

A. That is right.

Q. Where are the mills located?

A. Oh, in different parts of the country; some of them in Maine and New Hampshire, and I even receive goods as far as from Wisconsin.

The Court. What kind of goods do you get from those mills?

The Witness. We buy woolens and rayons.

Q. Do they manufacture woolens in Wisconsin?

A. Yes. There is an agent here in Boston.

211 Q. Could you state about what percentage of your cloth comes from outside the State of Massachusetts?

A. I would say perhaps about 80 per cent.

Q. And what percentage of your finished sportwear is sold outside the State of Massachusetts?

A. I could really say at least 75 per cent—if that is your question. What is the question?

Q. What percentage of your finished—

The Court. When the garment is finished, what percentage of those garments is sold outside of Massachusetts?

The Witness. I would say 80 per cent.

The Court. They go into every market?

The Witness. Yes, we sell them all over the country, different parts.

Q. In 1944—

The Court. The goods that you manufacture, your finished goods, compete with goods that are manufactured in other sections of the country than New England or Boston?

The Witness. Well, my goods are manufactured in Boston but of course we sell them in different parts.

The Court. I understand that. But after you finish the garments and send them out, they compete with other garments that are made in other sections of the country?

The Witness. That is right.

212 Q. In 1944, what contractor did you employ to stitch your garments?

A. I believe I had two fellows who were making my garments,—a fellow by the name of Fisher, Barney Fisher, and another fellow by the name of —goes by the name of Kay. His name is Karger.

The Court. His business, his place of business is known as Kay Sportswear, K-a-y?

The Witness. K-a-y.

Q. About the end of September, 1944 or the 1st of October of the same year, Mr. Sherman, had you sent over the garments to Kay's and Fisher for stitching?

A. I would say I presume so. I don't remember the date exactly unless I would have to look up about that time.

Q. On or about that time had any work stopped on your garments by those two concerns?

A. Yes, sir.

The Court. Which two concerns do you refer to?

Q. What were the names of the concerns?

A. Barney Fisher and Karger.

The Court. Barney Fisher and Karger?

The Witness. And Karger, yes.

The Court. They both stopped work on your goods?

The Witness. Yes, sir.

Q. After they stopped work did you communicate with them?

A. Yes.

Q. What did Mr. Fisher say was the reason why
213 work was stopped?

Mr. Bergson. That is limited to Mr. Fisher only, if your Honor please?

The Court. Yes, for the time being it will be limited to Mr. Fisher. What did Fisher say to you?

The Witness. His answer was, "We were stopped by the Association to straighten things out, then we will go on again." That is, they were forming an Association themselves.

214 Q. Why did he stop work on your garments?

Mr. Bergson. I think we are entitled to the conversation.

The Court. That is what we want. What did he say was the reason for stopping work on your garments?

The Witness. Because they were forming an association and wanted—

The Court. What did he say to you?

The Witness. The reason was, they were forming an association and we would have to sign with them before they would finish our work.

Q. What did Mr. Karger say to you?

Mr. Bergson. That is with the same limitation?

The Court. Yes. Did Mr. Karger say anything to you as to the reason for stopping work on your garments?

The Witness. Mr. Karger expressed himself—

The Court. We would like to have the conversation.

The Witness. Well, we will have to sign with the Association and then they will go on with the work.

The Court. You will have to sign with the Association and then we will go on with your work?

The Witness. That is right.

Q. Mr. Sherman, I hand you Government's Exhibit No. 4, and I call your attention to page 4 of that document and ask if that is your signature on the bottom line?

A. Yes, that is my signature.

Q. You signed there for what company?

A. Kenniston Klassics.

215 The Court. By Philip Sherman, President; is that right?

The Witness. That is right.

Q. In 1944, Mr. Sherman, what was your gross business?

A. I believe we done close to $500,000.

Mr. Malloy. You may inquire.

The Court. Just one moment. Who asked you to sign this agreement?

The Witness. I go up to the Wholesale Garment and I decided to sign with them, so at that time I signed that paper.

The Court. You mean at some time when there was a meeting of the Wholesale Garment Association?

The Witness. Yes.

The Court. Was that in the headquarters of the Wholesale Garment Association?

The Witness. It was Mr. Richmond's office.

The Court. Mr. Richmond's office?

The Witness. Yes.

The Court. You think you signed the agreement there in Mr. Richmond's office?

The Witness. After the thing was straightened out I signed it.

The Court. Do you know who it was representing the Sportswear Manufacturers Association?

The Witness. There was quite a few people, but I wouldn't remember.

216 The Court. Can you remember any of the names?

The Witness. Offhand I don't know. There was quite a few boys and I am sure I would like to give the right names, but I am afraid I wouldn't be able to.

The Court. You can't remember anyone who was there —

The Witness. There were so many.

The Court. —representing the Woman's Sportswear Manufacturers Association?

The Witness. I don't like to pick out just names because there are so many boys.

The Court. We don't want you to guess at it, but if there was someone there representing this organization and you now can remember who it was, we would like to have the names.

The Witness. I presume—

The Court. No, not what you presume. Can you remember who was there representing the Women's Sportswear?

The Witness. It is awful hard for me to tell, your Honor.

The Court. Let me ask you, was Mr. Kaufman there?

The Witness. Kaufman? No. Kaufman is a contractor, the one I mean. Is that right?

The Court. Was Mr. Kaufman there?

The Witness. I know one Kaufman.

The Court. Was Kaufman there representing the Sportswear Manufacturers Association?

The Witness. No, I don't remember.

217 Q. Was Mr. Rosenberg there?

A. I don't remember of seeing Mr. Rosenberg there.

Q. Had you been asked to sign an agreement before the work stoppage?

A. We were told in speaking to my contractors and that was one reason.

Q. Did your contractors ask you to sign an agreement before the work stoppage?

A. They told me I would have to sign up with the Association.

The COURT. How long was that stoppage of work?

The WITNESS. I don't believe I lost more than two days.

The COURT. When you signed up—did you sign up with them?

The WITNESS. Yes.

The COURT. Did you sign before those two days?

The WITNESS. No, I didn't.

Q. What was the value of the goods which you had in the hands of these two contractors at the time of stoppage?

A. I don't remember offhand how many garments I had there, but I would say—jackets, we were selling them at $10.75. We usually gave them to them all cut, and the jacket was sold $9.75 and $10.75, and we used to pay them $3.60, I believe, for making them, and you can realize how many it would be; just take a single garment and figure it.

Q. My question is, can you recollect about the value of the goods in the hands of Barney, Fisher & Karger at the time of the work stoppage?

A. I would say 60 per cent.

218 The COURT. No. He wants to know at the time these people stopped working on your goods about how much was the value of those goods that were in their shops at the time that you sent over to be stitched up, and so forth. How much value did you place on them, approximately?

The WITNESS. I would say about $1800.

Q. Did you have orders for those garments?

A. Oh, yes.

Mr. MALLOY. You may inquire.

The COURT. One other question I want to ask. You say that you didn't sign up within the two days that these people in these contractors' shops had stopped work, so that they really went back to work before you signed, on your work; is that right?

The WITNESS. I wouldn't say they went back to work. I would say that they had work in the place and they accepted it.

The COURT. You said they only stopped on your goods for two days, and you said then you didn't sign this agreement in those two days, it was some time after that?

The Witness. Exactly.

The Court. So that they actually went back to work on your goods before you signed? is that right?

The Witness. Your Honor, I wouldn't remember what time because I was waiting for the deliveries and when I called up and asked for deliveries they told me they stopped work.

The Court. At any rate, you didn't sign within
219 two or three days later?

The Witness. No. I signed, but I don't remember exactly whether it was a day later or what was the time.

Q. You signed this agreement, Government's Exhibit No. 4, on October 17th?

A. That is right.

Q. After the work stoppage did you bring any suit in the Suffolk County Court?

A. Well, I remember that some lawyer called me up and I think I agreed the same as Kaplan and the other fellows.

Q. So that after the work stoppage you did bring suit?

A. Yes.

220 Q. Which was later dismissed?

A. Later I had a call. He said, "Now, what do you want to do? Do you want to press for an injunction?" I told him the best thing to do is to drop it, as long as the thing is over.

Cross Examination by Mr. Bergson

Q. Mr. Sherman, when you signed this agreement Exhibit 4 in Mr. Richmond's office, did you see anybody else sign that agreement at that time?

A. There was quite a few fellows—

Q. Did you see anybody else sign that agreement at that time?

A. I won't answer you directly, to say I seen it, but I don't remember who I seen. The names I don't remember.

Q. Did you see anybody else sign that agreement?

A. Oh, I think somebody else signed it.

Q. And did you go to Mr. Richmond's office at the request of Mr. Richmond?

A. Well, there was a meeting called.

Q. Mr. Richmond called you to his office? A. I don't exactly remember whether Mr. Richmond called me or whether his girl called me.

Q. Anyway, you got a call from Mr. Richmond's office to come up to his office?

A. That is right.

Q. And when you got there Mr. Richmond had this paper, Exhibit 4?

A. I wouldn't remember to tell you whether he had this paper while I was there or whether he didn't have it.

221 Q. He presented this paper to you, didn't he?

A. Later, after the meeting.

Q. Mr. Richmond was the fellow that asked you to sign it? Isn't that so? He presented it to you to sign?

A. He asked us to sign. So I said, all right.

Q. You said at that time, in 1944, your contractors were Karger and Fishman?

A. Yes.

Q. Did you have another contractor?

A. Yes. They don't make jackets. They make skirts.

Q. Who is that other contractor?

A. Happens to be my own brother. A & S.

Q. What is his first name?

A. Hyman Sherman.

Q. He is a member of the Association, isn't he?

A. He was for a while.

Q. And Hyman Sherman is one of the defendants in this case, isn't he?

A. Maybe so. I don't know.

Q. I know, but Hyman Sherman was a member of the Association at that time, wasn't he?

A. Maybe. I am not sure, to tell you.

Q. He did not stop working on your stuff, did he?

A. Well, he didn't work for me alone.

Q. He didn't stop working on your stuff at that time, did he?

A. He didn't stop working for me because he didn't have any work at that time, maybe, from us.

Q. Wait a minute. He didn't refuse to work for you at that time, did he?

A. No; he didn't.

222 Q. You are now in business under the name of Sherman Classics?

A. Yes, sir.

Q. And where is your place of business now?

A. Same place, 15 Kneeland Street.

Q. You have salesmen out on the road?

A. Yes.

Q. Do you carry an inventory?

A. Yes.

Q. What?

A. Yes, sir.

Q. Got a pretty large one now, haven't you?
A. Right now, yes.
Q. What?
A. Yes, sir.
Q. And it is a large one on piece goods, isn't it?
A. Yes, sir.
Q. The situation is a little different today than it was in 1944?
A. Oh, yes; yes, sir.
Q. Yes. Well, now, Mr. Sherman, isn't it a fact that the usual course of trade in your business is for the jobber or the manufacturer to first place his orders for piece goods?
A. Yes, sir.
Q. And then make up his samples, and then go out and sell from his samples?
A. No, not exactly that.
Q. But he places his order for piece goods long before he gets his orders for the finished product? Isn't that so?
A. Yes, sir.
Q. In 1944 it was a case of a seller's market, so that your goods did not stay too long in your place, they had to go out?
A. That is right.
Q. Conditions have changed materially since, haven't they?
223 A. That is right.
Q. Just a minute. Am I correct in understanding, Mr. Sherman, that the alleged stoppage that you referred to took place in September of 1944?
A. I am honest with you, I really don't remember exactly the date.
Q. Was it the same time when Kaplan of College-Town was stopped?
A. Yes; about the same time, that is right.
Q. Same time. And your stoppage only lasted for a couple of days?
A. That is right.
Q. You got all your work finally manufactured?
A. Oh, yes.
Q. And it was sold in the usual course of business?
A. Yes, sir.
Q. Outside of just that slight delay you suffered no inconvenience?
A. No; I wouldn't say I suffered inconvenience. I didn't suffer any inconvenience.
Q. And then it was at least three weeks later that you signed this agreement?

Mr. MALLOY. I object. There is nothing that appears about its being three weeks later. The date of the agreement is October 17th.

The COURT. What is the date that he testified to?

Mr. MALLOY. About the same time as Kaplan, which was established as October 2nd.

Mr. BERGSON. He said it was in September.

The COURT. The witness has testified that it was some time in September he had the stoppage on these goods, on these contracts. The question is proper.

224 Q. About three weeks later that you signed this agreement?

A. As far as I remember. I go by the signature on this date.

Mr. BERGSON. All right. That is all.

Mr. MALLOY. That is all, Mr. Sherman.

The COURT. By the way, what was your gross volume of work in 1944, the fall of 1944?

The WITNESS. Close to $500,000.

The COURT. $500,000?

The WITNESS. Close to $500,000.

The COURT. And that was true of 1945 too?

The WITNESS. 1945 I think I done a little more.

Mr. BERGSON. What was it in 1946?

The WITNESS. Well, I presume maybe it was $100,000 more. I have to check up.

Mr. BERGSON. 1946 was even $100,000 more than 1945?

The WITNESS. Yes, yes; more than $500,000.

Mr. BERGSON. That is all.

OSCAR H. COHEN, Sworn.

Direct Examination by Mr. KILGORE:

Q. Will you state your full name?

A. Oscar Hyman Cohen.

Q. Your address?

A. 25 Wiltshire Road, Brighton, Mass.

Q. What is your occupation, Mr. Cohen?

A. Sportswear manufacturing.

Q. What is the name of the firm?

A. Century Sportswear Company, Incorporated.

225 Q. What is your official position there?

A. President.

Q. In 1944 were you president of Century?

A. I was.

Q. Does Century maintain a sales office any place in the United States?

A. Yes; we do, in New York and in Chicago.

Q. Do you have salesmen?

A. Yes, sir; we do.

Q. What territories do they cover?

A. They cover the country. We have men travel through the South and through the West and through New England and through New York State.

Q. Where are the mills located that you get your goods from?

A. We buy most of our goods in New York City from agents. Where the mills are located I really don't know, except we know some are in New England, and we have some down South and in New Jersey.

Q. What were your gross sales in 1944?

A. About a million two or two and one-half.

Q. What percentage of that went out of the state of Massachusetts?

A. About 90 or 95 per cent.

Q. What firms do your stitching work?

A. Century Manufacturing Company, Brockton, Mass.

Q. Do you know the men that run that?

A. Yes; Mr. Morris Isenberg.

226 Q. In 1944 they did your stitching?

A. Yes, sir. Part of it; not all of it. We have our own factory, and we did the biggest part of it.

Q. You do stitching, then, in your own factory?

A. Yes. We have our own factory.

The Court. How many operators do you have?

The Witness. Stitchers?

The Court. Yes.

The Witness. About 36.

The Court. 36. Where is your place of business?

The Witness. At 33 Kneeland Street.

The Court. What proportion of your work do you do on your own premises, that is, the stitching?

The Witness. Oh, everything we do in our own factory. We make the complete garment.

The Court. But what percentage of all—

The Witness. Total volume? Oh, 60, 65.

The Court. And you let out about 40 on these contracts?

The Witness. 35 to 40.

Q. Will you look at Exhibit No. 4, on page 5. Is that your signature?

A. Yes.

Q. What name is it signed under?

A. Century Sportswear Company, Inc., Oscar Cohen.

The Court. That is your signature?

The Witness. Yes.

227 Q. What is the relation of cost of stitching to the cost of the finished garment that you sell?

A. About 30 per cent.

Q. 30 per cent?

A. About.

Mr. KILGORE. No further questions.

Mr. BERGSON. I have no questions.

The COURT. I just want to ask one question, Mr. Cohen. Before you signed this agreement for your concern you were manufacturing on your own premises about 60 to 65 per cent of your garments. Is that right?

The WITNESS. Yes, sir.

The COURT. And after you signed this agreement did the same situation continue to exist?

The WITNESS. Yes, sir.

The COURT. You continued to manufacture about the same proportion of the garments on your own premises?

The WITNESS. Yes, sir.

The COURT. And you let out to those contractors the balance?

The WITNESS. Yes, sir.

The COURT. As a condition of working on the goods that you let out to these contractors was there any request made that you let out a larger proportion to the contractors?

The WITNESS. No, sir; no, sir.

The COURT. Was anything at all requested, demanded of you which would have changed that situation you were in?

228 The WITNESS. No, sir; it didn't affect us a bit.

The COURT. 35 to 40 per cent—

The WITNESS. It wouldn't make any difference whether we made more or less; it wouldn't have changed our relationship.

The COURT. All right.

Mr. BERGSON. Just one question, Mr. Cohen.

Cross Examination by Mr. BERGSON:

Q. As a part of your manufacturing duties you ran a union shop?

A. I don't get it.

Q. You ran a union shop?

A. Yes, sir.

Mr. BERGSON. That is all.

Mr. MALLOY. Your Honor, I should like to say this. In the Government's view it would be immaterial—

The COURT. Wait. I am not going to ask you to argue the case now. You will have an opportunity to state that when you sum up and argue it.

Mr. MALLOY. Mr. Chapman.

CHARLES CHAPMAN, Sworn.

Direct Examination by Mr. MALLOY:

Q. Your full name, Mr. Chapman?
A. Charles Chapman.
Q. Where do you live?
A. 27 Quincy Street, Roxbury.
Q. What is your business?
A. Cutter.
229 Q. For what company?
A. Banner Sportswear.
Q. Where is the Banner Sportswear Company located?
A. 75 Kneeland Street.
Q. How long have you held that position?
A. Seven years.
Q. Is the Banner Sportswear Company a corporation?
A. Not that I know of.
Q. Who is the proprietor of the Banner Sportswear?
A. Louis Cohen.
Q. Where is Mr. Cohen now?
A. Well, he was out of town but he got back last night. When I got back out of here yesterday I found him in the office.
Q. He was in Florida?
A. Yes, sir.
Q. I call your attention, Mr. Chapman, to page 5 of Government's Exhibit 4 and ask you if you can identify Mr. Cohen's signature? I am sorry, it is on page 4.
The COURT. You will admit it, won't you?
Mr. BERGSON. Yes, I admit it.
The COURT. That the Banner Sportswear signed this agreement, and it was the signature of Louis Cohen?
Mr. BERGSON. We are not disputing the signatures.
Q. Does the Banner Sportswear Company maintain sales offices, Mr. Chapman?
A. Yes, sir.
Mr. BERGSON. If your Honor please, this man is only a cutter.
230 Mr. MALLOY. I am only asking him for his knowledge.
The COURT. He is asking for his knowledge, whether he knows whether or not they do. I think he may probably testify. [To witness.] Do they maintain sales offices?
The WITNESS. Yes, sir.
The COURT. Do you know that of your own knowledge?
The WITNESS. Yes, sir.
The COURT. All right.
Q. Where is the sales office?
A. 1410 Broadway, New York.

Q. Does the company employ salesmen?
A. Yes.
Q. How many?
A. That I couldn't say offhand.
Q. Do you know what areas they travel in?
A. Oh, about the Middle West, southern territory, and New England and New York State.
Q. Do you know where the cloth comes from that is cut in the required patterns?
The COURT. Of your own knowledge.
A. As far as I know, from Maine, New Hampshire, Philadelphia, and one or two places down South.
Q. Do you know where the finished sportswear is sold?
A. All over the country.
Q. Do you know about what percentage is sold outside of the State of Massachusetts?
A. I would say about 80 per cent.
Q. In 1944, what contractors did your company employ for stitching?
A. We had Joseph Keshen, Hynot Sportswear,
231 Central Garment.
Q. On the Hynot Sportswear, who are the owners of that company?
A. At that time, Mr. Kagan and Mr. Schwartz.
Q. Then you said Central?
A. Central Garment.
Q. Any others?
A. There was a Globe Sportswear. There is the D. & G. Manufacturing Company.
Q. Do your know anything about a work stoppage that took place—
A. Only from hearsay.
Q. You have no personal knowledge?
A. No.
The COURT. We don't want hearsay.
Mr. MALLOY. I have no further questions.
The COURT. I would just like to ask you a question. How long have you been engaged as a cutter?
The WITNESS. About 27 years.
The COURT. How long with the Banner Sportswear?
The WITNESS. Seven years.
The COURT. Seven years?
The WITNESS. Yes, sir.
The COURT. Are these garments all cut before they are sent to the contractor?
The WITNESS. That is right, sir.
The COURT. That is your work, cutting?
The WITNESS. Yes, sir.

The COURT. Cutting them according to pattern?

The WITNESS. That is right.

232 The COURT. Then they are sent out?

The WITNESS. Sent out.

The COURT. To be stitched, and the buttons and buttonholes—

The WITNESS. The only thing we supply is canvas and the lining.

The COURT. You send the lining and the canvas out to the manufacturer?

The WITNESS. To be made into the finished garment.

The COURT. Any questions?

Cross-examination by Mr. BERGSON

Q. Mr. Chapman, what is the name of the contractor who does business under the name of Globe Sportswear?

A. At one time it was a party by the name of Goldberg but he has died, and now they are under the name of Larry —Lawrence Brick, I think it is.

Q. In 1944 was Goldberg alive?

A. Part of 1944.

Q. Yes.

A. As I remember correctly, he died I think it was, during the summer of 1944.

Q. Then after that?

A. I may be wrong on that.

Q. Then after that who ran it?

A. Lawrence Brick.

Q. What are the names of the men who conducted the business under the name of B. & G. Sportswear?

A. Paul Bagozian; I think his name is.

233 Q. Paul Bagozian?

A. Yes.

Q. You say the other contractors were Kagan and Schwartz?

A. That is right.

Q. And the Central Garment?

A. That is right.

Q. Who was the man that did business under the name of Central Garment?

A. Mr. Rosenfield.

Q. Rosenfield?

A. That is right.

Mr. BERGSON. All right That is all.

May it appear, if your Honor please, at this time that the two contractors who are designated as Globe Sportswear and B. & G. are not named as parties defendant to this action?

The COURT. If they are not, that is true.

Mr. MALLOY. That is true.

SAMUEL SCHWARTZ, Sworn.

Direct Examination by Mr. KILGORE:

Q. Will you state your full name?
A. Samuel Schwartz.
Q. Your address?
A. 327 St. Paul Street, Brookline.
Q. What is your occupation?
A. Manufacturer ladies sportswear.
Q. What name do you operate under?
A. Windsor Sportswear, Inc.
Q. Are you a stockholder?
A. Yes, sir. President and stockholder.
Q. President and stockholder?
A. Yes.
Q. In 1944 were you president and stockholder?
A. Yes, sir.
Q. Do you maintain sales offices?
A. Yes, sir.
234 Q. In what locations?
A. New York City, 1410 Broadway.
Q. Do you have any salesmen?
A. Yes, sir.
Q. What territories do they cover?
A. Michigan, Pennsylvania, Ohio, New York State.
The COURT. How many salesmen?
The WITNESS. Three.
Q. What was the total volume of your business in 1944?
A. Oh, about $700,000.
The COURT. And '45?
The WITNESS. Seven hundred.
The COURT. In 1945?
The WITNESS. About the same.
The COURT. Continued about the same?
The WITNESS. Yes, sir. A little bit less in 1945.
The COURT. A little bit less, and a little bit more in 1946?
The WITNESS. Yes, sir.
235 Q. Where are the mills located from which you get your goods?
A. Massachusetts, New York State, New Jersey, Pennsylvania, Tennessee.
Q. What percentage of your goods do you get from mills located in Massachusetts?
A. About 30 per cent or so.
Q. And you order your goods through sales agencies in New York?
A. Yes, sir.
Q. What percentage of the total production is sold outside of the state of Massachusetts?

The COURT. Of your finished goods.

A. About 90 per cent outside of Massachusetts.

Q. What firms do the stitching work on your garments? Do you know the name?

A. Louis Zola Dress Goods, Morris Greenberg of M. Greenberg & Company, and Hyman Sherman, of A & S Manufacturing Company.

Q. Do you know the address of A & S Manufacturing Company?

A. 15 Kneeland Street, Boston.

The COURT. Do you admit that A & S Manufacturing was a signatory to this agreement?

Mr. BERGSON. Yes, sir.

Cross-examination by Mr. BERGSON:

Q. In your place do you do your own cutting?

A. Yes, sir.

Q. And you send the goods out to be manufactured?

A. Yes, sir.

Q. Do you also furnish the buttons?

A. No, sir.

236 Q. Do you furnish everything but the buttons?

A. No, sir; just piece goods, just cutting of the piece goods.

Q. And linings?

A. No linings.

Q. There are no linings?

A. Well, I didn't make any jackets.

Q. What did you make, just skirts?

A. Just skirts, yes, sir.

Q. What did the skirts have besides piece goods?

A. I don't follow you.

Q. Did they have hooks and eyes?

A. No. Just zippers and a button, that is all.

Q. That is all?

A. Well, I furnished the zipper and the goods.

Q. You furnished the zippers?

A. The zippers and the goods.

Q. So that all the contractor put in was just the buttons?

A. That is right.

Q. And you had a fixed price or a unit price for each skirt, didn't you with the contractor?

A. Well whatever the skirt cost.

Q. I mean you had a unit price for the skirt?

A. What do you mean by unit price?

The COURT. You mean for the stitching and the work done?

Q. You paid them so much per skirt?

A. Yes.

The COURT. That was the way you paid, so much per skirt?

The WITNESS. According to the labor.

Q. So much per skirt?

A. That is right.

Q. What percentage of that price covered the cost of the buttons that he furnished, that the contractor furnished?

A. About a third.

237 The COURT. I don't think he understood your question. You asked him what percentage of the amount that they paid the—

Mr. BERGSON. Contractor.

The COURT. —contractor was reflected in the buttons.

Mr. BERGSON. Yes.

Q. Do you understand now what the question is? How much do you pay ordinarily for a skirt?

A. About 65 cents.

Q. What were the buttons worth on those skirts?

A. Maybe a cent or so.

Q. That is what I wanted to get at.

The COURT. How many buttons were on the skirt?

The WITNESS. Just one button.

The COURT. That would be a cent?

The WITNESS. Yes.

The COURT. You supplied the zipper?

The WITNESS. That is right.

The COURT. Hooks and eyes?

The WITNESS. When there was a zipper there wasn't any hooks at all.

Q. Now, do you carry an inventory?

A. Yes, sir.

Q. Got a pretty heavy one at the present time?

A. Not bad.

Q. But it is a little more than usual?

A. Yes, sir.

Q. Consists mostly of piece goods?

A. Yes, sir.

Q. And you always had a certain amount of piece goods in your place, didn't you, during 1944 and 1945?

A. Yes, sir.

238 Mr. BERGSON. That is all.

The Court. As I understand you specialize in skirts?

The WITNESS. Yes, sir.

The COURT. And I suppose the labor on a skirt is less than it would be on a jacket?

The WITNESS. Yes, sir.

The COURT. What percentage of the selling price of the skirt was labor that you paid to the contractor?

The WITNESS. About a third.

The COURT. As I understood, you said you paid about 65 cents a skirt?

The WITNESS. That is right.

The COURT. And you would only get about three times that much for the skirt?

The WITNESS. That was just the labor.

The COURT. I want to find out what percentage of the selling price the labor represented.

Q. What did you sell the skirt for?

A. $3.75, $4.75, all depending upon the type of the goods.

Q. But you paid 65 cents for the labor?

The COURT. $3.75 or $4.75.

The WITNESS. Yes, all depending upon the price of the goods.

The COURT. What we want to find out is the percentage of the selling price that was represented by the labor
239 in stitching and other work that the contractor did.

What percentage of the selling price did the labor represent?

The WITNESS. Well, the labor itself would probably represent about 20 per cent.

The COURT. And of course you had your—

The WITNESS. Overhead and everything else.

The COURT. You had your goods, you had your overhead, your selling, of course, and shippers?

The WITNESS. That's right.

Mr. BERGSON. Then he had his own cutters.

The COURT. You had your own cutters?

The WITNESS. That's right.

The COURT. As I understand, you said you paid about 65 cents for the work that he did on this skirt?

The WITNESS. Yes.

The COURT. And you would sell that skirt for around $3.55?

The WITNESS. $3.75.

Q. In 1944 you said you had three contractors, three shops?

A. Yes, sir.

Q. And you kept them all busy during 1944?

A. Well, fairly busy in 1944.

Q. I mean you distributed your work pretty evenly among them?

A. Yes, sir.

Q. And that arrangement went right through 1944?

A. Yes, sir.

Q. And also through 1945?

A. Yes, sir.

240 Q. And also through 1945?
A. Yes, sir.

Mr. BERGSON. That is all.

The COURT. Did you use these same contractors for this work before you signed this agreement? In other words, did you let your work out to the same contractors in 1944, prior to signing this agreement?

The WITNESS. Yes, sir.

The COURT. And you continued with them?

The WITNESS. Yes, sir.

The COURT. And prior to the signing of this agreement in 1944 did you distribute your work any differently among those contractors?

The WITNESS. No, sir. It was the same contractors.

The COURT. Previous to signing?

The WITNESS. Yes, sir.

Mr. BERGSON. May it appear at this time that Louis Zola is not a defendant in this case?

Mr. MALLOY. It is so agreed.

GEORGE ZAKON, Sworn.

Direct Examination by Mr. MALLOY:

Q. Your full name, please.
A. George Zakon.
Q. Where do you live?
A. 874 Commonwealth Avenue, Newton.
Q. What is your business?
A. Manufacturing knit wear, sportswear.
Q. Under what name do you do business?
241 A. Zakonit, Inc.
Q. What position do you hold with the corporation?
A. President and treasurer.
Q. You are also the principal stockholder?
A. Yes, sir.
Q. Do you maintain any sales office for women's sportswear?
A. Just at Kneeland Street, 83 Kneeland Street.
Q. You have no out-of-state sales office?
A. No, sir.
Q. Where do you purchase your cloth for your sports goods?
A. At New York and Boston.
Q. Will you state what percentage of the cloth used in the manufacture of sportswear is purchased in mills located outside the state of Massachusetts?
A. I couldn't say. We buy from agents and I never interest myself where the mills are located.

The COURT. Just a moment. You are pretty much familiar with mills that manufacture cloth, aren't you?

The WITNESS. Not very much.

The COURT. How long have you been in the business?

The WITNESS. Since 1923, but my business is knitwear and not sportswear.

The COURT. So that you wouldn't be familiar with the mills that manufacture rayon, cotton, woolens?

The WITNESS. No, sir.

The COURT. I presume some of these men who are in this business could almost recognize a piece of woolen by looking at it, about what factory it came from?

The WITNESS. I think so.

The COURT. Go ahead.

242 Q. When you purchase cloth, you place an order with a mill agent that may be located in Boston or New York?

A. Correct.

Q. What percentage of your finished garments are sold outside of the Commonwealth of Massachusetts?

A. I would say 80, 85 per cent.

Q. What was the gross business you did in women's sportswear in 1944 and 1945?

A. Approximately $50,000 or less, slightly less.

Q. And what contractor did you use in 1944?

A. S. Mover & Son.

Q. Do you know where they are located?

A. On Harrison Avenue.

Mr. MALLOY. Will it be stipulated that Mr. Zakon signed Government's Exhibit 4?

Mr. BERGSON. Yes.

The COURT. It is agreed now?

Mr. BERGSON. Yes, sir.

Mr. MALLOY. You may inquire.

Mr. BERGSON. No questions.

HYMAN GREENBLATT, Sworn.

Direct Examination by Mr. KILGORE:

Q. Will you state your full name and address?

A. Hyman Greenblatt, 107 Parker Avenue, Newton Highlands.

Q. What is your business, Mr. Greenblatt?

243 A. Manufacturer of women's sportswear.

Q. What firm are you connected with?

A. Churchill Sportswear.

Q. Where is that located?

A. At 30 Kneeland Street in Boston.

Q. Is that a corporation?

A. No; that is a partnership now.

Q. Who is your partner?

A. Mr. Julius Cohen.

The COURT. What was it in 1944?

The WITNESS. Well, part of 1944 I had it myself, and the latter part I took in Mr. Cohen as a partner.

The COURT. You have never been a corporation?

The WITNESS. No, sir.

The COURT. It was your own firm in 1944?

The WITNESS. Up until June.

The COURT. And then you took in a partner?

The WITNESS. That is right.

The COURT. How long had you been conducting the business under the name of Churchill Sportswear?

The WITNESS. It is about three years, going on three years, three years in June.

The COURT. Started about 1941?

The WITNESS. No; about 1943, I guess.

Q. Do you maintain sales offices any place?

A. I do.

Q. What is their location?

A. Well, we have one in New York City. At that time it was at 200 West 34th Street, at that time.

244 Q. Do you have salesmen out on the road?

A. Yes.

Q. What territories do they cover?

A. We have one covering New England, one covers Philadelphia, Baltimore and Washington. We have one that covers New York State and Ohio, and one that covers the Middle West.

Q. How do you order your cloth, through the sales agencies?

A. Through sales agencies and through jobbers.

Q. They are located where?

A. Well, the sales agencies are usually located in New York City.

Q. What was the gross annual business in 1944 of Churchill?

A. About $300,000.

Q. In 1945?

A. In 1945 it was about $450,000.

Q. What percentage of the finished sportswear is shipped outside the State of Massachusetts?

The COURT. Of his manufacture?

Mr. KILGORE. Yes, sir.

A. I would say about 90 per cent.

Q. What contractors do the stitching work for Churchill Sportswear?

A. P & F Sportswear. Do you mean at the present time?

Q. In 1945?

The COURT. About 1945.

A. P & F Sportswear.

Q. What men were connected with that firm, do you know?

A. Yes; Peter Greenblatt, my dad.

The COURT. That is your father?

245 The WITNESS. That is right.

The COURT. So you were rather brought up in this business, weren't you?

The WITNESS. Yes; just about.

Mr. KILGORE. It is stipulated that Churchill Sportswear signed Government's Exhibit 4?

Mr. BERGMAN. Yes.

Cross-examination by Mr. BERGSON:

Q. What was your total volume in 1946, Mr. Greenblatt?

A. I really don't know, but I think it was about the same, a little more than 1945.

Q. Better than in 1945?

A. I think it was a little better than 1945.

Q. And during 1944, 1945, and 1946, did Peter Greenblatt do all your contracting work?

A. No; we had others.

Q. Peter Greenblatt did do contracting work for you during 1944, 1945, and 1946?

A. He did, yes, that is right.

Q. You say you had others?

A. That is right.

Q. Who were they?

A. Well, Barney Fisher. I didn't have them working for me right along, but at one time or another I had some of these people that I mentioned.

Q. Tell me who they were from time to time.

A. Well, I had Barney Fisher, I had Mr. Herscowitz, I had Modern Garment.

Q. Who is the Modern Garment?

246 A. That was a contract shop, a Government contract shop out in Brockton. They had just got through with a Government contract.

Q. What is his name? What is his name?

A. I don't know the name of the party. It is some name that I just can't think of.

The COURT. Can't think of the name?

The WITNESS. Think of the name.

Q. And is there anybody else that you had?

A. I had Sol Raphael.

Q. Anybody else?

A. You mean up to the present time or at that particular time?

Q. Up to the present time.

A. I have had Barney Finkelstein. That is about all I can remember.

Q. They all made sportswear for you?

A. That is right.

Q. And depending upon which contractor you wanted, that was the contractor you gave your work to? Is that right?

A. That is right.

Q. And that depended upon what arrangements you could make individually with each contractor to take on your work?

A. That is right.

Q. And that concerned itself a good deal with the prices that they would charge you for their work? Isn't that so?

A. That is right.

The COURT. Do you have any further questions?

Mr. KILGORE. No, we don't your Honor.

247 Mr. BERGSON. Just a minute. That is all.

The COURT. I would like to ask a couple of questions. Do you make the entire garment, or entire suit, the jacket and skirt?

The WITNESS. Yes; at times we do.

The COURT. What do you specialize in particularly?

The WITNESS. Mostly skirts and slacks.

The COURT. Now, in so far as skirts and slacks are concerned, what percentage of the selling price does the labor represent, that is, the price you have to pay to the contractor for the sewing and the stitching and buttonholes and so forth?

What percentage is that to your selling price?

The WITNESS. You mean the labor?

The COURT. Yes.

The WITNESS. Near 20 per cent.

The COURT. About 20 per cent?

The WITNESS. About 20 per cent.

The COURT. Does that follow through on all?

The WITNESS. No, not on all garments.

The COURT. The jackets reflect a greater percentage? Is that true?

The WITNESS. That is right.

The COURT. Prior to signing this agreement, did you pay for this work about the same price you paid after?

The WITNESS. Yes, sir.

248 The COURT. Did the price change any at all after you signed the agreement?

The WITNESS. Not at all.

The COURT. Prior to signing the agreement, was there any great differential in any of these contractors you used in the prices they charged for the work that you gave them?

The WITNESS. No, I didn't find any, much of a differential.

The COURT. There wasn't much of a difference?

The WITNESS. No.

The COURT. Was the situation changed any after you signed the agreement?

The WITNESS. No; it didn't change at all.

The COURT. Well, you have mentioned several contractors to whom you let this work, before and since signing this agreement? Is that right?

The WITNESS. That is right.

The COURT. And since signing this agreement you have let it out to several different contractors?

The WITNESS. That is right.

The COURT. Well now, can you tell us whether or not there is any difference at all in prices they charge for doing this work, this stitching work?

The WITNESS. There isn't any difference at all, to amount to anything.

The COURT. Not any difference to amount to anything?

249 The WITNESS. No.

The COURT. All right. That is all.

Mr. BERGSON. May it appear, your Honor please, at this time, that Peter Greenblatt is not a defendant in this case, and neither is Modern Sportswear, neither is Mr. Raphael, nor Mr. Finkelstein?

The COURT. All right. That is so?

Mr. KILGORE. That is agreed, your Honor.

The COURT. That they are not parties defendant?

Mr. KILGORE. Yes, sir.

My. S. I. Cohen.

[Mr. Cohen does not respond.]

Mr. RICHMOND. Mr. Cohen sent a messenger here a few minutes ago, that he was home sick with a cold.

The COURT. Did you summons him?

Mr. KILGORE. He was subpoenaed.

The COURT. Where is the messenger?

Mr. RICHMOND. Somebody just came in the door a few minutes ago.

[Mr. Kilgore then called Mr. J. Simon as a witness, and he also did not respond.]

The Court. Will counsel come here a moment, please?

[Colloquy at the bench.]

[The following took place at the bench:]

250 The Court. Mr. Bergson, counsel for the defendants will agree that the Dartmoor Sportswear signed the agreement Exhibit 4, and that S. I. Cohen signed for the firm.

Who is the next witness?

Mr. Malloy. Mr. Simon.

The Court. Did you summons him?

Mr. Malloy. Yes, sir.

The Court. It is agreed that the agreement Exhibit 4 was signed by Simon & Douglas, and that Mr. J. Simon signed for the firm.

[Colloquy at the bench ended here.]

The Court. Mr. Malloy, at recess time I wish you would determine, if you can, why Mr. Cohen and Mr. Simon have not responded to your summons by the Court.

Mark Karofsky, Sworn.

Direct Examination by Mr. Kilgore:

Q. Will you state your name and address, Mr. Karofsky.

A. Mark Karofsky, 115 Lanark Road, Brighton.

Q. The name of your business?

A. Summit Sportwear Company.

Q. And that is located where?

A. 68 Essex Street.

Q. In 1944 what was your position?

A. Treasurer.

Q. Are you owner of the business? Is it a corporation?

A. Stockholder.

Q. Stockholder.

A. Majority stockholder.

251 Q. In 1944 who were your contractors doing stitching work?

A. Central Sport-Work Company and Hynat Sport-Work Company.

Q. Who were the men connected with Hynat Sport-Work Company?

A. Mr. Cagan and Mr. Swartz.

Q. And with Central?

A. Mr. J. Rosenfield.

Q. In 1944 did you maintain any sales offices outside of Boston?

A. New York City.

Q. And you had salesmen?

A. Yes.

252 Q. They travel where?

A. Middle West, West Coast, down South, and New England.

Q. In 1944 what was your gross annual business?

A. Around $425,000.

Q. And in 1945?

A. About $450,000.

Q. In 1944 what mills did you order goods from? Where were they located?

A. They were located in New England and down South.

Q. What percentage of the cloth came from outside of the State of Massachusetts?

A. Approximately 90 per cent. You mean outside of Massachusetts?

Q. The State of Massachusetts.

The COURT. Yes, outside of the State.

A. About 85 per cent, 80 per cent.

Q. What percentage of your production is sold outside the State of Massachusetts? A. About 80 per cent.

Q. In 1944 that was true?

A. The same.

Q. What relationship does the cost of stitching that you pay your contractors have to the cost of the finished garment?

A. Approximately 25 per cent.

Q. What type of garments do you manufacture mostly?

A. We make a better grade item, little priced sportswear.

Q. Do you manufacture skirts and jackets?

A. That is right.

Q. And slacks?

A. That is right.

Q. In other words, the entire line?

253 A. Well, not every type of garment. We make skirts, shirts, slacks mainly.

Mr. KILGORE. Mr. Bergson, it is stipulated he has signed?

The COURT. Mr. Bergson, do you agree that the Summit Company signed this agreement, Exhibit No. 4?

Mr. BERGSON. Yes.

Mr. MALLOY. Your Honor, I had intended to call one more witness who may take some little time. Would it be a convenient spot to take the recess?

The COURT. Yes, sir.

[Short recess.]

Mr. MALLOY. May we approach the bench, your Honor?

The COURT. Yes, sir.

[Conference at the bench.]

Mr. MALLOY. Mr. Rosenberg.

BERNARD D. ROSENBERG, Sworn.

Direct Examination by MR. MALLOY:

Q. Your full name, please, Mr. Rosenberg?

A. Bernard D. Rosenberg.

Q. And where do you live?

A. 133 Ruthven Street, Roxbury.

The COURT. Can you spell that?

The WITNESS. R-u-t-h-v-e-n.

Q. What is your occupation?

A. I am the executive director of the Women's Sportswear Manufacturers Association.

254 Q. You are a defendant in this case?

A. I am.

Q. How long have you held that position of executive director of the Women's Sportswear Manufacturers Association?

A. Since the latter part of 1944.

Q. Are you sure that you were not executive director in the early part of 1944?

A. I couldn't offhand—

The COURT. Well, now, have you any records or data with you at all, memorandum, which will enable you to state the date?

The WITNESS. Indeed I have your Honor.

The COURT. All right. Can't you answer the question a little more accurately than that as to when you became executive director? If he is going to refresh his recollection from the records, I think he should.

[Mr. Bergson produces a book.]

Mr. Bergson. He is entitled to have it, at least, to see if it refreshes his recollection, that is all [handing to witness].

The COURT. That is right. That is true.

[Witness examines book.]

The WITNESS. May I have the ledger, Mr. Bergson?

Mr. MALLOY. Perhaps we can help him, your Honor.

Q. Mr. Rosenberg, I hand you what purports to be a letter, dated March 3, 1944, from you to the Capitol Skirt Company. Is that a letter which you wrote?

A. Indeed.

255 Q. You had that mailed in the ordinary course of business to the addressee?

A. That is right.

Mr. MALLOY. I desire to offer this letter [handing to counsel].

Mr. BERGSON. No objection.

[Letter, March 3, 1944, Rosenberg to Capitol Skirt Co., marked Government's Exhibit 7.]

The COURT. Is that included in this group of letters?

Mr. MALLOY. Yes, it is, your Honor.

Mr. BERGSON. Yes, it is.

Q. Then, apparently, you were executive director of the Women's Sportswear Manufacturers Association at least as early as March of 1944?

A. Yes, sir.

The COURT. Does that help you to tell us just when you did become connected with this organization?

The WITNESS. Well, if I could get the ledger I could probably tell you more definitely.

The COURT. All right, let him have that so he will know more definitely.

[Ledger handed to witness.]

The WITNESS. December 21, 1943.

Q. Do you have any records which indicate when the Women's Sportswear Manufacturers Association was formed?

A. No.

Q. Do you know of your own knowledge how long
256 that organization had been in existence?

A. No, I don't.

The COURT. Do you mean to say as one of the organizers of this—

The WITNESS. No, I wasn't one of the organizers.

The COURT. All right. As executive director you say you can't tell us now, give us some approximate idea of when this organization was formed?

The WITNESS. Well, I believe it was formed prior to that.

The COURT. Prior to what?

The WITNESS. Prior to December 21, 1944.

The COURT. That is when you first became connected with it?

The WITNESS. That is right.

The COURT. Was it in existence at that time?

The WITNESS. I believe it was.

The COURT. Don't you know whether it was or not?

The WITNESS. I really don't know because they came to me at that time and they asked me to take over as executive director.

Q. Who was that committee?

A. Mr. Kaufman, Mr. Mover, Mr. Kagan, and there were two more.

Q. What is Mr. Kaufman's first name?

A. Harry Kaufman.

Q. And Mr. Mover?

A. Sy Mover.

Q. What positions, if any, did they occupy with
257 the Women's Sportswear Manufacturers Association?

A. At that time?

Q. Yes.

A. I really don't know. They were just a committee as far as I was concerned.

Q. After you became executive director did they hold any office?

A. Yes, Harry Kaufman became the president.

Q. Was he elected to that office after you became executive director?

A. That is right.

Q. Did Mr. Mover hold any position in the Sportswear Manufacturers Association?

A. He was the treasurer.

Q. Your letter, Mr. Rosenberg, Government's Exhibit 7, reads, in part:

"Enclosed please find copy of agreement in accordance with your request."

Now, I hand you a document that is marked as Government's Exhibit 5 for identification, and I will ask you whether that is the agreement which you sent with your letter, Government's Exhibit 7?

A. I couldn't say definitely that this was the agreement.

Q. Was the agreement—

A. I don't remember the agreement sent.

Q. —identical in terms with Government's Exhibit 5 for identification?

A. No. There were various agreements, various drafts of agreements.

Q. Referring now to Government's Exhibit 5 for identification which I hand you, had you handed that
258 proposed agreement to any jobber?

A. I don't recollect.

Q. Have you seen that agreement before?

A. I have.

Q. Where did you see it?

A. In my office.

Q. Did you hand that agreement or one in identical terms to any jobbers for signature?

A. No.

Q. Did you ever ask any jobber to sign that agreement?

A. No.

Q. What did you do with the agreement; just leave it in your papers?

A. No, we had conferences with the Wholesale Garment Association represented by Mr. Larry Richmond.

Q. Was this one of the agreements that was the subject of the conversation?

A. I believe it was the subject of conversation.

Mr. Malloy. I offer it in evidence.

Mr. Bergson. No objection.

The Court. All right, that may be marked.

[Undated draft of agreement between Association and contractors, formerly marked as Government's Exhibit 5 for identification, now marked Government's Exhibit 5.]

Q. Now, Mr. Rosenberg, do you have any records which indicate the membership of the Women's Sportswear Manufacturers Association?

A. Yes.

Q. What are those records?

A. I didn't get it.

Q. What are those records which indicate the membership?

A. Well, we have—Oh, here it is [handing paper].

Mr. Malloy. The witness has handed me a paper.

259 Q. What was that paper made up from, Mr. Rosenberg?

A. From the ledger.

Q. The ledger that reflects dues payments?

A. That is right.

Q. May I see the ledger?

A. [Handing]. Yes.

Mr. Malloy. I have never seen this book, your Honor.

[A pause.]

Q. Does this ledger cover the period from 1944 to the present time?

A. From 1943, December 21.

Mr. Malloy. I desire to offer this for the purpose of questioning the witness as to membership.

Mr. Bergson. You are not going to make it an exhibit, are you?

Mr. Malloy. I just want to ask the witness questions about it.

Mr. Bergson. You may interrogate him about it but I don't think that makes it an exhibit.

The Court. Mark it for identification at this time. Offer it for identification at this time.

Mr. Malloy. All right.

[Ledger of Association marked Government's Exhibit 8 for identification.]

Mr. Bergson. That is merely for the purpose of referring to it in the record?

The Court. Just for identification. It is not an exhibit.

Mr. Benoson. Not an exhibit.

260 The Court. It is merely for the purpose of referring to it, for identification only.

Q. Using this document, Mr. Rosenberg, Government's Exhibit for identification No. 8, I want to ask you about the persons, what that record shows as to when they began paying dues and when they ceased if they ceased. The first is Kay's Sportswear, Inc.

A. Kay?

Q. Kay's Sportswear, Inc.

A. November 1, 1943.

261 Q. They began paying dues?

A. November 1st, 1943.

Q. And has that company continued to be a member of the Women's Sportswear Manufacturers Association?

A. It has.

Q. Next is S. Mover & Son, Inc.

A. October, 1945.

Q. What happened on that date? You mean that S. Mover & Son, Inc. was not a member?

A. Oh, yes, he was a member, but he paid up a lump sum of dues October, 1945.

Q. When was S. Mover & Son, Inc. first a member?

A. I believe in 1943.

Q. Since the beginning?

A. That is right.

Q. Morris Isenberg. Was Mr. Isenberg connected with the company known as Century?

A. That is the company he operates, Century Sportswear in Brockton. November 1st, 1943.

The Court. Who is that, Isenberg?

The Witness. Morris Isenberg, yes.

Q. And he remained a member since that time?

A. Yes.

Q. Next is Max Herscowitz doing busniess as M. & H. Sportswear Company.

A. November 1st, 1943.

Q. Has Mr. Herscowitz remained a member since that time?

A. Yes, he has.

Q. Next, Hyman Cagan and Nathan Swartz, doing business as Hynat Sportswear Company.

A. He started to pay dues on April 21st, 1945.

Q. Was he a member before that time?

A. He was.

Q. Since what time?

A. Since 1943.

262 Q. That is the Hyfat Sportswear Company?
A. That is right.
Q. And Hyman Cagan, and Nathan Swartz. Morris Greenberg is the next defendant?
A. Did he operate under a trade name?
Q. I don't believe so.
Mr. Bergson. Who is that?
Mr. Malloy. Morris Greenberg.
The Witness. I have no record of him in my ledger, but he was a member for a short time.
Q. I show you this memo that you prepared and ask you to refresh your recollection from that.
A. This was prepared by the secretary.
Q. What does that state as to Morris Greenberg?
A. Left October, 1945.
Q. You think he did join? A. I believe he joined somewhere around 1944.
Q. What part of 1944?
A. Likely around October or so; September or October.
Q. If you can answer as to any of these defendants without referring to your book, please do so, Mr. Rosenberg. Barney M. Fisher, doing business as Fisher Garment Company?
[Conference at the bench.]
The Court. It is admitted that all parties named in the complaint at some time or another were members of the Women's Sportswear Manufacturers Association with the exception of Rocco Cerasulo, Jacob Wienberg, Hy-
263 man Medoff, Harry Fishman, Isaac Shapiro and Henry Webber. All the other parties named in the complaint were at some time members after March 1st, 1944.
Q. Mr. Rosenberg, will you refer to your records as to Rocco Cerasulo doing business as Melody Sportswear Company.
A. I have no record of Rocco.
The Court. Rocco Cerasulo, you have no record of him?
The Witness. No.
Q. Do your records—
The Court. Just a moment. Of the firm known as Melody Sportswear Company?
The Witness. I have no record of Cerasulo.
The Court. Just let him see if he can find it under Melody.
Q. I think I might refresh your recollection as to that concern, Mr. Rosenberg, referring to copies of the minutes of your association made on October 31, 1944.

A. Yes.

Q. And I will refer you to the third paragraph. Does that aid you to recall whether or not the Melody Sportswear Company ever became a member of the Women's Sportswear Association?

A. No.

The Court. It doesn't aid you, you say?

The Witness. No. I don't believe they ever became a member.

Mr. Malloy. I haven't yet offered these minutes.

The Court. Now it is called to his attention for the purpose of refreshing his recollection.

Mr. Malloy. Yes.

264 The Court. First of all, you may answer does that refresh your recollection as to Rocco?

The Witness. It refreshes my recollection, your Honor, that they applied for membership.

The Court. Rocco Cerasulo?

The Witness. Yes. Melody Sportswear.

The Court. Rocco Cerasulo doing business as Melody Sportswear?

The Witness. That is right.

The Court. It does refresh your recollection?

The Witness. That he applied for membership, your Honor.

The Court. Now, then, go on from there.

Q. Do your records show whether any initiation fee was paid by applicants or members?

A. It doesn't show unless he was accepted.

Q. You don't make a record of the payment of the initiation fee?

A. Unless he is accepted as a member and paid his dues.

Q. If he is not accepted you return the initiation fee?

A. That's right.

The Court. What do you say now, after looking at the minutes of the meeting referred to, as to whether or not Rocco Cerasulo, doing business as the Melody Sportswear Company, was ever a member of this organization?

The Witness. To the best of my recollection, your Honor, I believe that he withdrew as a member right after.

265 The Court. He what?

The Witness. He withdrew as a member right off.

The Court. At some time he was a member?

The Witness. For a very short period.

The Court. What time was that?

The Witness. I believe for about a month or so. That is my recollection.

The Court. At what time?

The WITNESS. That was on October 31, 1944.

266 Q. What can you state as to Hyman Medoff being a member or not being a member?

[The witness searches through the ledger.]

The COURT. Have you got anything else that would aid him?

Mr. MALLOY. No, I haven't, your Honor.

The COURT. To refresh his recollection on that?

The WITNESS. I wish to make a correction on this Melody, your Honor. I see I have found a page here. He applied on October the 31st.

The COURT. 1944?

The WITNESS. 1944. And he dropped out on December the 23d.

The COURT. December what?

The WITNESS. 23d.

The COURT. 1944?

The WITNESS. 1944, yes.

Q. Have you found anything as to Medoff?

A. How is that?

Q. As to Medoff?

A. No. I am speaking of Melody.

The COURT. I know, but have you found anything as to Medoff? Are those alphabetically listed there?

The WITNESS. Records starting from 1945 are alphabetically listed. I never had any occasion to look at this ledger. First time I looked at it.

267 Q. While you are going through that, you might keep an eye out for Harry Fishman.

The COURT. Let's see if he can find Medoff. Let's keep him on that now. [To the witness:] Do you see him under the M's there at all? Medoff?

The WITNESS. There is Melody, I just found.

The COURT. Do you know a man personally by the name of Medoff?

The WITNESS. Indeed I do, your Honor.

The COURT. You have no independent recollection as to whether or not he was a member of this organization?

The WITNESS. He was a member for a short period.

The COURT. He was a member for a short period?

The WITNESS. He was.

The COURT. About what time?

The WITNESS. Ah, here it is.

The COURT. Let's have it.

The WITNESS. He joined on February 9th, 1943, and he dropped out around, probably October or so.

Mr. BERGSON. 1943?

The WITNESS. 1943, that is right.

The Court. All right. And did he renew his membership?

The Witness. No, never did.

The Court. Haven't you got entries up to September 1st there?

The Witness. Entries, but he did not pay; he dropped off.

268 The Court. What note have you got there to show he dropped out?

The Witness. If he didn't pay any dues he just dropped out.

The Court. That is the way you conclude that,—if he didn't pay any dues he dropped out. Now, when is the last time he paid dues?

The Witness. September 28, 1943.

Q. What do your records show as to Harry Fishman, Mr. Rosenberg?

The Court. Harry Fishman, doing business as the Harry Fishman Sportswear?

A. [After searching through the ledger] He came in on December the 23d, 1944.

Q. How long did he remain?

A. That is all.

Q. That is the only entry you have as to him?

A. Yes, only entry we have on Fishman.

Q. Have you received any written resignations from any of these men?

A. No. Oh, yes; I believe there was one, from the A. & S., if I remember right.

The Court. Who is that?

The Witness. That is Hyman Sherman.

Q. We come next to Isaac Shapiro and Henry Webber, doing business as S. & W.

A. Shapiro and Webber, November 1st, 1943.

Q. And how long did—

A. Then he dropped out, and then he came in again, on October 31, 1944.

269 The Court. When did he drop out?

The Witness. From November 1st, 1943, till October 31, 1944, he did not show up or pay any dues.

The Court. And in October, 1944, he joined again?

The Witness. He joined again, and he dropped out again.

The Court. When did he drop out the second time?

The Witness. Well, he didn't pay any dues and didn't show up at any meetings after that date.

Mr. Malloy. I think that covers the list, your Honor.

Q. Mr. Rosenberg, who have been the presidents of the Women's Sportswear Manufacturers Association since

March 1, 1944? Perhaps it will be easier,—can you tell us the roster of officers beginning with March 1, 1944, and continuing down? Who was the president at that time?

A. On March 1st?

Q. Yes.

A. Harry Kaufman.

Q. And who was the vice-president?

A. I do not recollect who was the vice-president.

Q. You have no record of it?

A. No, I have no record of it.

Q. Who was the secretary?

A. William R. Frederico.

Q. And who was the treasurer?

A. Sy Mover.

270 Q. Do you know who the members of the executive committee were at that time?

A. I don't believe we had an executive committee at that time.

Q. How long did Mr. Kaufman remain as president?

A. I believe till October 31.

Q. Who succeeded him?

A. Max Herscowitz.

Q. Was that 1944?

A. That is October 31, 1944.

Q. Who was the treasurer at that time?

A. Sy Mover.

Q. He remained as treasurer?

A. He remained as treasurer.

Q. And Mr. Frederico remained as secretary?

A. That is right. Mr. Morris Isenberg was elected vice-president at that time.

Q. Was there any executive committee named at that time?

A. Indeed.

Q. And who were the members?

A. Mr. Morris Isenberg was a member, Barney Fisher, Joseph Keshen, Nathan Karger, B. Byer, Max Herscowitz, William R. Frederico, Hy Kagan, and Sy Mover.

Q. How long did Mr. Herscowitz remain as president?

The Court. Mr. Rosenberg, did you have annual elections?

The Witness. Yes. We didn't have an election in the year 1944, and Mr. Isenberg, I believe, vice-president, took over in 1945. I see in the minutes that Mr. Isenberg, being vice-president of the Association, carried on as president, and then—

271 The Court. Now, did you have an election on October 31, 1944?

The Witness. Yes, that is right.

The COURT. Where Mr. Herscowitz was elected president?

The WITNESS. That is right.

The COURT. How long did he hold office?

The WITNESS. He held office till Hyman Kagan became president on January 6, 1946, but he dropped out in the middle of the year and Mr. Isenberg, the vice-president, acted as president till the following election.

The COURT. I see.

Q. Did Mr. Mover and Mr. Frederico remain as treasurer and secretary?

A. Yes.

Mr. BERGSON. Secretary?

The WITNESS. Frederico Secretary and Mover as Treasurer.

Q. Treasurer. Now, you had an election in 1945. Who became president then?

A. We had no election but the vice-president who came in 1945 acted as president until the election on January 16, 1946.

Q. Who became president then?

A. Mr. Kagan.

Q. Did the treasurer and secretary remain as they had been?

A. The treasurer and secretary remained the same. The vice-president was the new one. Barney Fisher was elected vice-president on January 16, 1946.

Q. Did the Women's Sportswear Manufacturers
272 Association hold meetings, Mr. Rosenberg.

A. Yes.

Q. Were they regular meetings, meetings held monthly or weekly or any set time?

A. No, the meetings were called whenever the occasion arose.

Q. Who called the meetings?

A. The secretary.

Q. He sent notice to the members that the meeting would be held?

A. Yes, sir.

Q. And about how often were meetings held?

A. Sometimes they were held once a month and other times they weren't held for two or three months.

Q. Were minutes kept of the proceedings held at the meetings?

A. Yes.

Mr. MALLOY. I have asked my brother to produce the minute book.

Mr. BERGSON. He has it there.

Q. May I see the minute book?
A. Yes [handing].

Mr. MALLOY. The Government desires to offer at this time the minutes of the meetings of October 31, 1944, November 14, 1944, December 26, 1944, and May 16, 1945.

Mr. BERGSON. Are those the ones you had the photostats of on the notice to admit facts?

Mr. MALLOY. Yes, they are.

Mr. BERGSON. I take it by reason of the rule they are in evidence.

The COURT. The truth of these records is admitted,

273 Mr. BERGSON. Yes.

Mr. MALLOY. However, they are not yet in evidence.

Mr. BERGSON. No.

The COURT. All right. They may be admitted and marked.

Mr. BERGSON. Just a minute, if your Honor please.

The COURT. I will hear you if you object.

Mr. BERGSON. I would like to know for what purpose they are being offered at this time.

The COURT. All right. State it.

Mr. MALLOY. They are being offered because the Government regards them as pertinent in that they reflect the interpretation placed upon the agreement of October 17, 1944 by the Association. They show some of the activities which the Government regards as performed to carry out that agreement. Also, to at least those present at the meeting of October 31, 1944, the agreement was brought home. I could point out what specific paragraphs the Government regards as material if your Honor desires.

Mr. BERGSON. I think that would be important, if your Honor pleases.

The COURT. All right. I think you had better outline it. Let us start. Which is the first one?

Mr. MALLOY. October 31, 1944.

The COURT. All right.

Mr. MALLOY. The Government regards as material

274 the paragraph beginning,—

"The secretary read the names of the firms who signed the contract."

Mr. Rosenberg's explanation of Point 1 of the agreement. We also regard as material the paragraph which reads—

"Mr. Morris Isenberg, suggested that it would be advisable to admit members into the association who have been already established in the business for years and not new comers in the trade."

Then the suggestion as to a membership committee to carry out that suggestion.

Next, the minutes of the meeting of November 14, 1944. The Government regards as material the paragraph beginning, "Mr. Mover reported"—perhaps the paragraph preceding that, too, which shows that the funds deducted by the jobber from the contractor included also dues to the Association, that is, paragraphs 6 and 7. In addition, the Government regards as material the next to the last paragraph and the one preceding that, which read:

"It is suggested by the President that a committee on designation of contractors to the jobbers.
He appointed the following members on the committee: Morris Isenberg—Chairman; Nathan Schwartz, B. Fisher, Max Herscowitz."

As to the minutes of the meeting of December 26,
275 1944, the Government regards as material the fourth paragraph beginning——

"Mr. Rosenberg, reports that he has an appointment with Mario on Wednesday Dec. 27th, 1944 for the purpose of him joining the Association. It is the consensus of opinion that the union take steps on the following shops: Fields, Fishel and J. Rosenberg, for them to join the Association."

And the following paragraph indicating the term of the agreement regarding the deduction beginning to apply January 1, 1945.

The Government regards as material with respect to the meeting held on May 16, 1945, the paragraph reading:

"It is requested to investigate Ernest Donath Sportswear about putting out work to non-members of the Association."

Mr. BERGSON. Donath's Sportswear is not a signatory to the agreement.

Mr. MALLOY. It is a signatory, Mr. Bergson.

Mr. BERGSON. It is not.

The COURT. My recollection is it was.

Mr. BERGSON. It is my recollection that Sportsmode was and he went out of Sportsmode.

Mr. MALLOY. But Ernest Donath, however, was a signatory.

Mr. BERGSON. Sportsmode, Ernest Donath, is the
276 last signature.

The COURT. That is right.

Mr. BERGSON. That is the signature of both but then it became Sportswear and he is out in business for himself under the name Donath's Sportswear. That is the testimony.

The COURT. That is right.

Mr. MALLOY. We regard it as material no matter whom the Association sought to investigate with regard to not

giving work to non-members, whether it was a member or not.

The COURT. All right. I will hear you, Mr. Bergson, as to why they are not admissible.

Mr. BERGSON. My objection is that what these men do in a meeting among themselves for their own benefit has nothing to do—is not subject to any interference by the Government under Section 1 of the Anti-Trust Law; in other words, it is a purely local matter. They have a right to organize for their own benefit and to carry out things.

The COURT. That may be an argument, of course, to the merits of the case; but as to making these particular records admissible or inadmissible—

277 Mr. BERGSON. There isn't any evidence, it seems to me,—excuse me,—that anything that they did in these meetings was followed by any action that affected these signatories.

The COURT. That is true. I am going to admit these records as offered.

Mr. BERGSON. Instead of marking the records, why not take what is already on file, those photostats, and use those?

Mr. MALLOY. I have another set of photostats which it would be hard for your Honor to read, but I can substitute another set and have these physically marked.

The COURT. I think that would be the best way. We better have those marked. Each one may be marked separately.

[Photostat of minutes of meeting of Women's Sportswear Manufacturers Association dated October 31, 1944, is marked Plaintiff's Exhibit 9.

Photostat of minutes of meeting of Women's Sportswear Manufacturers Association dated November 14, 1944, is marked Plaintiff's Exhibit 10.

Photostat of minutes of meeting of Women's Sportswear Manufacturers Association dated December 26, 1944, is marked Plaintiff's Exhibit 11.

Photostat of minutes of meeting of Women's Sportswear Manufacturers Association dated May 16, 1945, marked Plaintiff's Exhibit 12.]

Q. Mr. Rosenberg, you attended the meetings as executive director?

A. I did.

Q. And sometimes you kept minutes of meetings?

A. If the secretary wasn't there.

Q. Did you keep a roll of those in attendance at the meetings?

278 A. Not all of them.

Q. You attended substantially all of the meetings?

A. I wouldn't say all, but the greatest number of them.

Q. Do you have a record of those in attendance?
A. No.
Q. I ask you if you can remember some of those who attended the meetings you remember. Was Mr. Nathan Karper usually at the meetings?
A. Some meetings.
Q. Was he at most of the meetings?
A. I wouldn't say most of the meetings, no, sir.
Q. At least half of the meetings?
A. He was laid up sick and was operated on and in the hospital for a long period of time, so he didn't attend the meetings.
Q. How about Mr. Samuel Mover?
A. Yes, most of the meetings.
Q. And Mr. Morris Isenberg?
A. A small number of the meetings.
Q. When he was president?
A. When he was president he didn't attend at all times.
Q. He did not at all?
A. Not at all times.
Q. But he was there at most of the meetings?
A. Very likely.
Q. Mr. Herscowitz, did he attend most of the meetings?
A. I wouldn't say most. He attended a great number of them.
Q. Mr. Hyman Cagan and Nathan Swartz, were they present at most of the meetings?
A. Yes, I think they were present at most of the meetings.
Q. Mr. Barney M. Fisher?
A. Not at most of the meetings.
Q. A good percentage of the meetings?
A. A good percentage of the meetings.
279 Q. How about Harry Kaufman?
A. At the time he was a member, when he was president, he attended at about every meeting.
Q. He presided over them?
A. He presided.
Q. Did Mr. Byer and Mr. Miller attend most of the meetings?
A. Not most.
Q. William R. Frederico, the secretary, was he present at most of the meetings?
A. No.
Q. He attended a good many of the meetings?
A. Yes, sir.
Q. Israel Rosenfield?
A. In poor attendance.

Q. Joseph Keshen?

A. Poor attendance.

Q. Did Mr. Keshen hold any office in the Association?

A. I don't recollect.

Q. Mr. Rosenberg, have you ever received any written notice of termination of the agreement of October 17, 1944 from any of the jobbers?

A. Not to my knowledge.

Mr. MALLOY. You may inquire.

Mr. BERGSON. I am not going to inquire at this time, if your Honor please.

The COURT. All right. He reserves the right to call him later.

Mr. MALLOY. The plaintiff rests.

Mr. BERGSON. Following the practice that prevails in jury cases, where at the end of the plaintiff's case the defendant makes a motion for a directed verdict, I would like to follow the same practice here in the jury waived
280 case and ask your Honor to consider at this time whether you should enter a judgment for the defendants.

The COURT. You may make such a motion. It may be filed now and without prejudice it is denied, and you may continue on.

Mr. BERGSON. Does your Honor want to hear us at this particular time?

The COURT. I don't believe it will be necessary to take any time on that now. I understand your motion is ready.

Mr. BERGSON. Yes.

The COURT. Under the rules you may file it now, and that is without prejudice denied; and you may continue on with your case and also file it at the close of your case.

Mr. BERGSON. Yes, your Honor, I understand [handing motion to the Court].

The COURT. Without ruling on the particular matters which you have assigned as reasons for your motion for judgment, I will deny it now. I deny the motion for judgment. I presume what you want is tantamount to a dismissal of the action or directed verdict,—

Mr. BERGSON. Yes.

The COURT. Judgment for the defendant. I deny that without ruling on the particular matters which you have assigned as reasons for that.

Mr. BERGSON. Is that equivalent to saying that you want a postponement?

281 The COURT. I am denying the motion for a judgment for the defendants.

Mr. BERGSON. Is Mr. Kramer here?

PHILIP KRAMER, Sworn.

Direct Examination by Mr. BERGSON:

Q. Your name, please?

A. Philip Kramer.

Q. Where do you live?

A. 85 Stratton Street in Dorchester.

Q. What is your occupation?

A. I am manager of the Joint Board of the Cloak, Skirt and Dressmakers Union.

Q. And that is under the jurisdiction of what organization?

A. The International Ladies Garment Workers Union.

Q. That is a nation-wide organization?

A. It is.

Q. And do you hold any position in the International Ladies Garment Union, the International organization?

A. I do.

Q. What position do you hold there?

A. Vice-President.

The COURT. International Vice-President?

The WITNESS. Yes, your Honor.

Q. Are you also a member of the general executive board?

A. Yes, sir.

Q. Do you know Mr. Kaplan, a Mr. Benjamin Kaplan, who is connected with the College-Town Sportswear?

A. I do.

Q. At some time in September of 1944 was your union engaged in procuring contracts with the jobbers of Sportswear?

Mr. MALLOY. I object, if your Honor please. I
282 want at this time to make the same objection to any testimony as to—

The COURT. I think you better do it as the questions are asked. You object to this question?

Mr. MALLOY. Yes, sir.

The COURT. I overrule your objection. He may answer.

The WITNESS. What was the question?

Mr. BERGSON. Will you read it, Mr. Stenographer?

[Last question read.]

The COURT. I think you better make that a little more definite. Jobbers of sportswear where?

Mr. BERGSON. In Boston.

A. We were.

Q. And were you in charge of the negotiations covering this attempt to get agreements with the various jobbers in Boston in 1944, September?

A. I was.

Q. And did you have any dealings with Mr. Benjamin Kaplan of College-Town Sportswear in September of 1944 with a view of getting a contract signed between the union and this concern?

A. I had.

Q. Was such a contract signed in 1944?

A. Yes.

Q. Have you got that contract here?

A. I have.

[Producing contract].

Q. And when was that contract entered into?

A. 5th day of September, 1944.

Q. Were you familiar with the manner in which
283 Mr. Kaplan had his stitching work done on his sportswear? Did he have an inside shop or did he have an outside shop?

A. He didn't. He had outside shops.

Q. And when you say "outside shops", what do you mean by that?

A. He had his stitching done with contracts.

Q. Now, did you know at that time who his contractors were, at the time this agreement was signed in September, 1944?

A. I knew some of them.

Q. Will you tell us the names of those that you did know? A. One of them was Herscowitz and another one was the Mario Sportswear.

Q. Now, was it the practice of your union to sign agreements with the contractors directly at that time?

Mr. MALLOY. I object.

The COURT. I will allow it. He may answer.

Q. Did the union enter into written agreements with the contractors at that time as well as with the jobbers?

A. Yes.

The COURT. Strike out the last part of it. Did you enter into negotiations with the contractors? And by "contractors" we mean these firms that did the stitching or sewing.

The WITNESS. The answer is Yes.

Q. Now, those contractors that signed up with the union, were they known as union shops?

A. They were.

Q. And of course those that did not sign up with you were known as non-union shops?

A. That is right.

284 Q. Was Herscowitz a union shop in September, 1944?

A. Yes.

Q. Was Mario a union shop in 1944?

A. No.

Q. Is there anything in your agreement that you signed up with Kaplan relating to Kaplan's giving work to non-union shops at the time of the agreement?

Mr. MALLOY. I object, your Honor. There is no agreement in evidence.

The COURT. He may answer that.

Q. You can answer that Yes or No.

A. Let me have that question again.

[The pending question is read.]

A. Yes.

Q. Now will you look at that agreement and will you read that portion of it that relates to non union shops?

Mr. MALLOY. If your Honor please, I object to reading any document not in evidence before the Court.

The COURT. He may testify as to whether or not there was anything in the agreement which compelled—who did you negotiate with, Kaplan?

The WITNESS. With Mr. Kaplan.

The COURT. And he was a broker?

The WITNESS. A jobber.

The COURT. A jobber?

The WITNESS. Yes, sir.

The COURT. —not to let out his work to non-union shops? You may testify if there was anything, and if there was, what that was.

The WITNESS. On page 6, Paragraph 29,—

285 The COURT. It isn't necessary to locate it. What, if anything, is there within that agreement that prevented the jobber from letting out his goods or stitching to non-union shops?

The WITNESS. Do you want me to read the first paragraph?

The COURT. Tell us what it is.

The WITNESS. It is simply this: He was not permitted under this agreement to deal with non-union firms that were not members of the union.

286 Q. Now, Mr. Kramer, did you have any talk with Kaplan with reference to his giving work to any non-union shops after this agreement was signed?

A. I did on several occasions.

Q. And as a result of your talks with Mr. Kaplan, did you do anything about the fact that Mr. Kaplan was giving work to a non-union shop?

A. I did.

Q. And what did you do?

A. After several conversations with Mr. Kaplan, I warned him and told him that unless he would stop giving work to non-union shops I would stop the union shops.

Q. And did you give any orders to stop the union shops?

A. I did.

Q. And whose shop did you have reference to?

A. Herscowitz.

The COURT. Now, by stopping the Union shops, you mean that you gave an order to Herscowitz to stop working on Kaplan's goods?

The WITNESS. That is correct; sure.

Mr. MALLOY. No time has yet appeared, your Honor, when this—

The COURT. All right. We will try to get that.

The WITNESS. That was in September of 1944.

Q. After Kaplan had signed this agreement?

A. Yes; in the same month, about that period.

Q. Now, during that time that you were conferring with Mr. Kaplan about stopping work in Herscowitz's
287 shop, did you have any conferences with Mr. Richmond representing the Wholesale Garment Dealers?

A. I am continuously in conference with Mr. Richmond.

Q. Well, I know, but at that time did you have any conferences with Mr. Richmond with reference—

A. At that time and thereafter.

Q. I mean, at that time and thereafter, in reference to the situation that arose by reason of the situation in Kaplan's shop.

A. No.

Q. Do you remember that Mr. Kaplan brought court proceedings because of the alleged stoppage in Herscowitz's shop?

A. I don't.

Q. You don't know of that?

A. I don't remember.

Q. At that time were you also engaged in trying to get the contractors to sign up with the Union?

A. I was.

Q. And were you also—And in your attempts to get the jobbers to sign up with the Union were you in conference with Mr. Richmond?

A. I was.

Q. Now, did you confer with Mr. Richmond about having both the contractors and the jobbers make arrangements between them with reference to signing up with the Union?

A. I did have conversation to that effect.

Q. Now, will you tell the Court just what your efforts were, and what you said to Mr. Richmond?

A. On several occasions I have asked Mr. Rich-
288 mond to sit down with me in the attempt of forming an association of the jobbers and manufactures group, with the purpose of entering into a tri-party agreement.

The Court. About what time?

The Witness. In the month of September and the month of October, and maybe several months after that, continuously for 1944 and into 1945.

Q. Go ahead. And what?

A. Mr. Richmond told me that he would attempt to be helpful, and as a result there was a conference held after a preliminary conference that was called by the Union at the Hotel Bradford in the month of September of 1944, and the second conference was held in Mr. Richmond's office, where there were about 20 or some 20-odd manufactures and jobbers present.

The Court. Any contractors?

The Witness. There was, a few; a committee representing the contractors' association was present.

The Court. This particular contractors' association?

The Witness. This; yes, your Honor.

The Court. The Women's Sportswear Manufacturers Association?

The Witness. Yes, your Honor.

Q. Now, do you know whether or not any draft agreements were drawn between the Women's Sportswear Association and the jobbers in an attempt to carry out—

289 A. I do not; I don't know that.

Q. Did you have any conferences with Mr. Richmond at your attorney's office in connection with drafting any such agreement?

A. Between the contractors and the jobbers?

Q. Well, in attempting to have the jobbers and the contractors get together so as to carry out this three-party agreement?

A. No, no; I had a conference with Mr. Richmond in the Union attorney's office in reference to drawing up a contract between the jobbers and the Union.

Q. Yes. Do you know whether or not Mr. Roewer at the same time was drawing up a contract between the contractors and the jobbers?

A. I don't remember that. I don't recall that.

Q. Well, I will show you Plaintiff's Exhibit No. 3 and ask you to read that. I show you also Plaintiff's Exhibit No. 5. And see if either one of those refreshes your recollection.

A. [After examining the exhibits:] The question is, whether these agreements were drawn up in Mr. Roewer's office?

Q. Or whether they were discussed with Mr. Richmond in your presence in Mr. Roewer's office?

A. I don't remember that.

The Court. The answer is, no?

The Witness. I do not remember it.

Q. Mr. Kramer, how many workers are there in the Boston area who work on women's sportswear, or how many were there in 1944?

The Court. September of 1944?

290 Q. September of 1944?

A. To the best of my knowledge, about six to seven hundred.

The Court. That work on women's sportswear?

The Witness. Yes, your Honor.

The Court. Does that include members of your Association and others too?

The Witness. Yes, your Honor.

The Court. The total would be 600 or 700 engaged in that particular work?

The Witness. In 1944.

The Court. All right.

Q. Now, is women's sportswear manufactured in other places besides Boston?

A. There are.

Q. And what are the other places where it is manufactured?

A. Well, the largest market that I know of is Los Angeles.

The Court. Where it is manufactured, not the market.

The Witness. Yes; manufactured.

A. [Continuing] Los Angeles, California; Chicago, Illinois; St. Louis, Missouri; there are some sportswear being manufactured in Texes.

The Court. Dallas?

The Witness. In Texas. And then there is a sportswear market, a small market, in Philadelphia.

Q. Any in New York City?

A. And New York is the second largest market that I know of.

The Court. By market—

291 The WITNESS. Manufacturing market.

The COURT. What I mean to say, by market, that might lead one to conclude that that is where it is used, sold, consumed.

The WITNESS. It is made. All those cities that I have mentioned are those where it is being manufactured.

The COURT. All right. Where there is manufacturing for that kind of goods?

The WITNESS. Yes, your Honor.

Q. Now, do you know how many women's sportswear workers there are in the Los Angeles area?

A. Los Angeles, the last report we have received from the General Executive Board, there is between 12,000 and 13,000 workers.

Q. How about Chicago?

A. Chicago, there was about 3500 workers.

Q. How about New York?

A. Between 5,000 and 6,000.

Q. How about St. Louis?

A. St. Louis, about 500.

Q. And how about Dallas, Texas?

A. About 350 to 500.

Q. And how about Philadelphia?

A. Philadelphia about 1500.

The COURT. Which is the largest manufacturing center? Los Angeles?

The WITNESS. Los Angeles.

The COURT. And New York?

The WITNESS. And New York comes second.

Q. Then Chicago?

A. Then Chicago, then Philadelphia, then Boston.

292 Q. And do you know whether or not the goods that were manufactured in the Boston area compete throughout the country with the goods manufactured in the Los Angeles, Chicago, New York, and all the other areas which you mentioned?

A. They do.

Q. What?

A. You mean as far as competition is concerned?

Q. Yes.

A. They do compete.

The COURT. We will suspend here until quarter-past two.

[Adjourned at 1 p. m., to be resumed at 2:15 p. m.]

293 Afternoon Session.

PHILIP KRAMER, Resumed.

Direct Examination by Mr. BERGSON, Continued.

Q. Mr. Kramer, in 1944, and particularly around September of 1944, I think you testified that the union signed an agreement with the jobbers?

A. I did.

The COURT. In this particular line or generally?

Mr. BERGSON. I mean in the sportswear.

The COURT. In this particular line of sportswear?

The WITNESS. I did.

Q. Now, was the form of the contract that you were seeking to have signed up with the jobbers at that time a uniform form of contract?

A. Yes.

The COURT. That was for the employees of the jobbers?

Mr. BERGSON. No, that is with the jobbers.

The COURT. Just a moment. Was that for the employees of the jobbers, affecting the employees of the jobbers?

The WITNESS. Yes, sir.

Q. And also affecting the contractors that worked for the jobbers whether they were union or non-union members?

A. Contractors.

Q. Whether the contractors were union contractors or non-union contractors? Do you understand my question?

A. No.

Q. His Honor asked you whether the contract that
294 you were seeking to negotiate with the jobbers affected the workers of the jobbers, and you answered yes.

A. Yes.

Q. Didn't it also cover the contractors who worked for the jobbers?

A. Yes.

The COURT. After all, the contractors were not employees of the jobbers?

The WITNESS. Yes, your Honor.

The COURT. They were independent contractors, weren't they?

The WITNESS. They are independent contractors.

The COURT. Who, in turn, hired people to work for them?

The WITNESS. We have always considered the contractors as agents for the jobbers in the manufacturing industry because of the irresponsibility that exists, the question of pay and other conditions for which the jobber is held responsible, even though there is a contractor hiring and firing help.

Q. In view of his Honor's questioning, will you look at this contract which you had with Mr. Kaplan and pick out the sections that relate to the jobber's responsibility for the contractors that he employed?

A. No. 31:

"The Employer agrees to pay to the Union such sum or sums of money which may have been gained by employing a non-union contractor or contractors
295 in the manufacture of its merchandise after the firm has been ordered by the Union to cease employing such non-union contractors."

No. 32, on page 6:

"Every Employer shall be responsible to the members of the Union for the payment of their wages for work done by them on garments of such Employer made by its contractor, providing that such liability shall be limited to wages for five (5) full working days in every instance."

Q. I notice, Mr. Kramer, that in this contract there are some interlineations in ink that are initialed. Do you recognize the initials on that?

A. Yes, I do.

Q. Whose initials are they?

A. They are Larry Richmond's and my own.

Q. And Mr. Richmond is the man that testified in this court?

A. I don't know.

Q. Did you know that he was in court here this morning?

A. Yes.

Q. Now, in September of 1944, did the union have a contract with Mr. Sherman's firm which was then known as Kenniston's Klassics?

A. We did not.

Q. And in September, 1944 did the union have a contract with a jobber that was known as Banner Sportswear? I think that is Mr. Cohen.

296 The Court. What was the name of the sportswear?

Mr. Benson. Banner Sportswear.

A. Banner? I don't think so.

Q. In September of 1944 were you as agent of the union seeking to stop work in union shops that were working for non-union jobbers? By non-union jobbers I mean jobbers who had no contract with the union.

A. That was part of the program of the union at that time.

Q. And did you in 1944, in September, give any orders to stop work in the Kenniston Klassics, Mr. Sherman's firm?

A. I did.

Q. Did you give orders in September of 1944 to stop work in the contractor who was doing work for the Banner Sportswear?

A. That I can't remember.

Q. What is your best recollection?

A. To venture a guess, I would say yes.

The COURT. A guess won't do.

Mr. MALLOY. I move it be stricken out.

The COURT. Yes, it may be.

Q. What is your best recollection?

A. That I did.

Q. Now, Mr Kramer, it is a fact, isn't it, that your standard form of union contract with the jobbers provides for equitable distribution of the work in case of slack periods among the employees of the union shop?

A. It does.

Q. In your contracts with the contractors do they
297 provide for equitable distribution of the work?

A. They do.

Q. Is equitable distribution of work in a slack period one of the principles advocated and attempted to be enforced by your union?

A. It is.

Q. Now, Mr. Kramer, your union, the International Ladies Garment Workers Union, is one of the first unions that introduced the system of collecting a sum for health and vacation pay?

A. I believe that the International Ladies Garment Workers Union was one of the first labor organizations in the country to inaugurate that benefit.

Q. In the case of the manufactures as distinguished from the jobbers,—and by manufactures I mean those who have their own inside shops,—did the union contract with the manufacturers provide for the manufacturers to contribute a vacation fund to the union?

A. It did.

Q. Was there also any health fund?

A. Yes.

Q. Did the union also make provision with reference to payment of social security taxes that were due on account of workers?

A. Yes.

298 Q. Is it a fact that the union undertook for it members to see that all their Social Security taxes were paid to the Government?

A. It did.

Q. And to that end it required both the contractors and the jobbers to turn over to the union the Social Security funds?

A. No, not to the union.

Q. What was the set-up?

A. The plan of the union was to have the manufacturers turn over the amount of money to cover help and vacation fund and Social Security to an impartial person to control those funds.

Q. And who is that individual?

A. Sol C. Hamburger, 260 Tremont Street.

The COURT. How do you spell the last name?

The WITNESS. H-a-m-b-u-r-g-e-r.

Q. In so far as the contractors were concerned what was the attitude of the union with reference to attempting to collect this vacation, help fund and Social Security taxes?

Mr. MOLLOY. I object.

The COURT. Let me hear that last question.

[Question read.]

Mr. MALLOY. That calls for a state of mind.

The COURT. Yes. I don't think that he could answer that question.

Mr. BERGSON. He is the manager.

The COURT. No. It is showing a state of mind of a
299 group of individuals.

Q. What steps did the union take in reference to the collection of these vacation funds and Social Security taxes from contractors?

The COURT. If any.

A. I don't get the question.

Mr. BERGSON. Will you read it and see if he understands it?

[Question read.]

A. We inserted a clause in the agreement, the agreement with the jobbers and the manufactures, which made them responsible if there was a non-payment by the contractor, that he would be responsible for it.

Q. In your experience, Mr. Kramer, was there at any time any difficulty in collecting from the contractors these vacation funds and Social Security taxes?

A. In a good many instances.

Q. Now, Mr. Kramer, in your agreements with the jobber and the manufactures, did you have any provision for the settlement of disputes that might arise between the union and the jobbers or manufactures?

Mr. MALLOY. I object. I fail to see any materiality in an arbitration agreement between the union and manufacturers in this case.

The COURT. It is collateral, of course, as many of these questions are.

Mr. BERGSON. It is all part of the picture.

The COURT. I think I will allow the question. Did
300 you have any such provision in your agreement providing for arbitration?

The WITNESS. Between the contractors and the manufacturer?

Q. Between the union and the manufacturer and the jobber?

A. Oh, yes.

The COURT. Who was the arbitrator named at that time?

The WITNESS. At that time Mr. Max Copelos.

Q. C-o-p-e-l-o-s?

A. C-o-p-e-l-o-s.

The COURT. Where was he located?

The WITNESS. Parker House, Boston.

Mr. BERGSON. Off the record, he is employed by the United States Department of Conciliation.

Q. Did you have a similar provision in your agreements between the union and the contractors?

A. Yes.

Q. With the same arbitrators?

A. Yes.

Mr. BERGSON. I think that is all.

Cross Examination by Mr. MALLOY.

Q. Mr. Kramer, how long have you been affiliated with the union in this area?

A. As a member or an officer?

Q. As an officer.

A. Twenty-two years.

Q. Is it one of your duties to nogotiate contracts for your union with employers?

A. It is.

Q. And you have written contracts for your union with people known in the sportswear industry as contractors?

A. I have not at the present time.

301 Q. You have not?

A. No written agreement.

Q. No agreement with contractors?

A. No written agreements.

Q. Haven't you just been testifying in response to Mr. Bergson's questions that you had these various provisions as to arbitration and help and vacation fund between the union and contractors?

A. If I remember correctly the question was whether I have any agreements providing arbitration between the union and the contractors. I said I did.

Q. Is that in any written form?

A. No, it is not.

Q. That is just a verbal understanding between the union and the contractors?

A. We are now negotiating, but while we are negotiating a contract we have that understanding. Any disputes, we leave it to Mr. Copelos as an arbitrator.

Q. How long have you had an understanding with Kay's Sportswear, Inc.?

A. Who?

Q. Kay's Sportswear, Inc.

A. Kay's Sportswear.

Q. How long have you had an understanding with that contractor for your union? How long has such a contract been in effect,—contract or understanding?

A. Well, ever since I can remember we have had an understanding with Kay's Sportswear, for over a period of twenty years.

Q. How long have you had an understanding with S. Mover & Son, Inc.?

A. S. Mover dates back to about seven years.

The Court. You had no written agreement?

The Witness. We had an agreement with S. Mover & Son.

The Court. Written, in writing?

302 The Witness. Yes, your Honor.

Q. Have you had any oral or written understanding with Morris Isenberg or the Century Sportswear Manufacturing Company?

A. I did not, but the International Ladies Garment Workers Union did.

Q. How far does that date back?

A. Oh, I should think it dates back eight to nine years. Is that the Isenberg in Brockton, may I ask?

Q. Yes, it is. When did you reach an understanding with Max Herscowitz?

A. About nine years ago.

The Court. Was that oral or written?

The Witness. Oral.

Q. When you have an understanding with these contractors, Mr. Kramer, it is understood that they shall employ union labor exclusively?

A. Exactly.

Q. How long have you had an understanding with Hyman Cagan and Nathan Swartz, doing business as Hynat Sportswear?

A. Well, I guess he has been in business about five years.

Q. Did he enter into an understanding with you when he entered the business?

A. He did.

Q. How long have you had an understanding with Barney M. Fisher, doing business as Fisher Garment Company?

A. I have a written agreement with him.

Q. You have?

A. I have.

303 Q. How far does that date back?

A. Maybe six years.

Q. Do you have any understanding with Harry Kaufman, doing business as Paulkauf Company?

A. I have none.

Q. Have you ever had?

A. I did.

Q. During what period?

A. 1943, 1944, I believe.

Q. And the agreement was terminated in 1944?

A. Terminated in 1946.

Q. 1946. Have you ever had an understanding with the Melody Sportswear Company, or Rocco Cerasulo doing business as the Melody Sportswear Company?

A. Not on my list.

Q. Did you have an agreement with Benjamin Byer and Samuel Miller, doing business as Miller & Byer?

A. We had an agreement with Byer. I didn't know that there was a man by the name of Miller mixed in there.

Q. Well, you had an agreement with Benjamin Byer?

A. Yes, sir.

The Court. Has that expired?

The Witness. That has expired. Then he has resumed business again. Now we have another agreement with him at the present time.

Q. Do you have an agreement with the V. & B. Sportswear Company?

The Court. Frederico?

A. Oh, yes, sir.

Q. How long have you had that agreement?

A. About three years.

304 Q. When did you first enter into that?

A. 1943 or 1944.

The Court. Is that an oral or written agreement?

The Witness. Oral, your Honor.

Q. How long have you had an understanding with Israel Rosenfield, doing business as Central Manufacturing Garment Company?

A. About 10 years.

Q. Did you have an understanding with—

The Court. If any of these are written, will you call it to our attention? Otherwise we will assume they are oral.

The Witness. Yes, your Honor.

Q. Did you have an understanding with Jacob Weinberg, doing business as Century Manufacturing Company? Did you have an agreement with the Century Manufacturing Company at any time?

A. I did not, but I believe the International Ladies Garment Workers did. You see, the out-of-town are in another organization.

Q. Your jurisdiction is limited to the City of Boston?

A. City of Boston and area.

Q. Do you have an understanding with Jacob Keshen?

A. Oral agreement.

Q. How long?

A. Would be about 18, 19 years.

Q. You had an understanding with Hyman Medoff, doing business as Medoff Sportswear?

A. I don't recall the name.

The Court. Medoff.

The Witness. No. That firm is not on my list.

Q. You had an agreement with Harry Fishman, doing business as Harry Fishman Sportswear?

305 A. Is he located at 630 Washington Street?

Q. Yes.

A. Yes.

Q. How long have you had an understanding with Mr. Fishman?

A. Fishman? About 3 years, since 1943.

The Court. Is that a written or an oral agreement?

The Witness. It is an oral agreement.

Q. Do you have an understanding with Henry Webber and Isaac Shapiro, doing business as S. & W. Sportswear, or do you have an understanding with Henry Webber individually?

A. Well, with both. That firm recently split up partnership, and Mr. Shapiro went in for himself, and Webber remained on the old premises.

Q. Did you have an understanding with the partnership?

A. I did.

Q. How long standing was that agreement?

A. About 9 years.

The Court. Was that an oral agreement too?

The Witness. That was an oral agreement.

The Court. All right, sir.

Q. How long have you had an agreement, if any, with the Mario Sportswear, Mary LaPorto?

A. A year and a half.

The Court. Written?

The Witness. It is a written agreement, yes, your Honor.

Q. Do you have an understanding with Hyman Sherman, doing business as the A. & S. Manufacturing Company?

A. Yes.

306 Q. Is that written or oral?

A. It is oral.

Q. How long have you had that understanding?

A. About 4 years.

Q. Do you have an understanding with Bella Kritchmar, doing business as Bell Sportswear Manufacturing Company?

A. Bell?

The Court. Bella Kritchmar, doing business as Bell Sportswear.

The Witness. He is not on my list.

The Court. That seems to be a she, Bella Kritchmar. Not on your list. All right.

Q. When did you first have an agreement or understanding with a manufacturer or jobber in Boston?

Mr. Bergson. Jobber of what?

Mr. Malloy. Of women's sportswear.

A. I don't get that.

Q. When was the first time you entered into an agreement or understanding with a jobber or manufacturer in women's sportswear in Boston?

A. Well, I believe last February. February, 1946, we entered into an agreement, collective agreement, with the New England Sportswear Manufacturers Association. That is the jobbers and manufacturers.

Q. When did you first enter into an individual agreement with a jobber in women's sportswear in Boston?

The Court. A jobber you asked then?

Mr. Malloy. Or manufacturer.

A. About 10 years ago.

307 Q. Now, did you have an understanding with the Standard Sportswear Company?

A. Standard?

Q. Yes.

A. I believe I did.

Q. Was that written or oral?

A. Standard, I believe, was a written agreement.

Q. And when did you first enter into that agreement?

A. Can't remember.

Q. Can you give us an approximation?

A. My best guess would be about 7 or 8 years ago.

Q. And when did you first enter into an understanding, if you did, with the Banner Sportswear Company?

A. Banner? Is that man's name Collen?

Q. Yes.

A. About 4 or 5 years ago.

Q. When did you first enter into an agreement with the—

The Court. Haven't we been over all this list?

Mr. Malloy. This is the jobbers, your Honor.

The Court. All right.

Q. Have you had an agreement with the Dartmoor Sportswear Company?

A. Yes.

The Court. May I just make this suggestion, to shorten it up a bit? Why don't you let him look at the list of signatories there, and just tell us which ones he did not have an agreement with?

The Witness. You mean prior to this contract, prior to this collective agreement?

Q. We want to know when you first entered into
308 understandings with these jobbers who appear on this Government Exhibit No. 4. First you are looking on page 4. Now, the jobbers listed there, you have an understanding with all of them?

The Court. Look at all the names.

A. I can tell you whether we had an agreement with these people, but to tell you exactly when they were written—

The Court. Let's find out first if you had an agreement.

The Witness. Prior to the signing of this agreement? Is that your question?

Q. We want to know if you had an agreement, and if you had an agreement when it was entered into.

A. Well, I couldn't tell you now, unless I look up my records.

The Court. First of all, at any time. There are two, four, five of them on page 4.

Mr. Malloy. I think he has covered the first three, your Honor.

The Court. All right.

309 The Witness. I had an oral agreement with Debby-Lou Sportswear prior to the signing of this agreement.

I had an oral agreement with the Kenniston—

The Court. Klassics?

The Witness. —Klassics prior to the signing of this agreement.

The COURT. Let us go along that way. You get along faster.

The WITNESS. I had an oral agreement with Mark Karofsky of the Summit Sportswear.

I had a written agreement with the College-Town Sportswear, Inc., prior to signing this agreement.

Q. I think you have testified that was entered into about September 5 or 6, 1944.

A. September 5, 1944 is correct.

Zakonit, Inc., I had no oral or written agreement.

The COURT. Of course you understand this agreement was executed on October 17, 1944. You have the date in mind, don't you?

The WITNESS. Yes; yes, your Honor.

I had no agreement with the Churchill Sportswear, either oral or written.

Is this Windsor [pointing]?

Q. Windsor Sportswear.

A. I had a written agreement with the Windsor prior to signing this contract.

I had an agreement with Simon & Douglas prior
310 to signing this agreement.

The Century Sportswear, I had a written agreement.

The COURT. Prior to signing that contract?

The WITNESS. Yes, your Honor.

I had an oral agreement with the Lucky Maid Sportswear prior to signing this agreement.

I had a written agreement with the Simmons Sportswear prior to signing this agreement.

I had an oral agreement with the Colback Sportswear, Inc.

I had a written agreement with the Campus Skirt Manufacturing Company prior to the signing of this agreement.

The COURT. The next one is the Elleny Sportswear Company. What about that?

The WITNESS. I don't recall that, your Honor.

Mr. BERGSON. That is Harry Lipof.

The WITNESS. Yes. I don't recall of either having a written or oral agreement.

I had an oral agreement with the Kay Murray Sportswear.

The COURT. Prior to signing this agreement?

The WITNESS. Yes, your Honor.

I had neither a written nor oral agreement with the Franklin Sportswear Company.

I had an oral agreement with the Barbelle Sportswear prior to signing this agreement.

311 The COURT. And the last one?

The WITNESS. I had an oral agreement with the Sport-Modes.

Q. You state your agreement with Mr. Kaplan was entered into September 5, 1944, and that it required Kaplan to give his work to contractors who employed union labor?

A. That is what I said.

Q. Is there any provision in that agreement that requires Mr. Kaplan to give his work to contractors who belonged to the Women's Sportswear Manufacturers Association?

A. It did not.

Q. After this work stoppage, Mr. Kramer, were you named a defendant, your union named a defendant in any legal proceedings?

A. I don't think so.

Q. When did you tell Mr. Herscowitz to cease work on the garments of Kaplan?

A. I didn't tell Mr. Herscowitz to cease work on Mr. Kaplan's garments.

Q. What did you do?

A. I ordered one of my business agents to do that.

Q. When did you order the business agent to do that?

A. Sometime in September, 1944.

Q. What did you tell your business agent? To go over to Mr. Herscowitz's and throw his men?

A. I instructed my business agent to go over and

312 tell Mr. Herscowitz that Mr. Kaplan was on the unfair list, that he has violated his agreement, that he is dealing with non-union workers, the workers that were working for Mr. Kaplan.

Q. And did he, Mr. Herscowitz, comply with those instructions received?

A. According to the report from our business agent, he did.

Q. So that the agent went over and told Mr. Herscowitz that Mr. Kaplan was acting unfairly and also to cease work on the garments of Mr. Kaplan?

A. That is correct.

The COURT. Just a moment there. He has previously stated that Mr. Kaplan was on the unfair list. Now your question said acting unfairly.

Mr. MALLOY. I meant the same thing, your Honor.

The COURT. You meant the same thing, all right. He was on the unfair list because it appeared he was not hiring union people in his place of business?

The WITNESS. Yes, your Honor. He was not employing union contractors.

The COURT. He was not employing union contractors and so you considered him to be on the unfair list?

The WITNESS. Yes, your Honor.

Q. That work stoppage took place substantially simultaneously with the call that your agent made on Mr. Herscowitz?

A. Yes.

Q. So that to your knowledge Mr. Rosenberg had
313 no advance knowledge that you were going to pull your men out on strike?

A. As far as I know, Mr. Rosenberg knew nothing about this.

Q. So if Mr. Rosenberg, on September 25, wrote that work would be stopped on October 2d, he did not get that knowledge from you?

A. He did not.

Mr. MALLOY. I have no further questions.

Mr. BERGSON. No further questions.

The COURT. Just a couple of questions I would like to ask this witness.

You are pretty familiar with this industry in Boston, are you, this sportswear industry?

The WITNESS. Yes, your Honor.

The COURT. You know most of the jobbers and contractors engaged in this business?

The WITNESS. I do.

The COURT. In Boston. Now, you have just been asked to examine a list of the jobbers' signatories to this contract which is Exhibit 4. You have gone over that whole sheet in answering questions for Mr. Malloy. What, in your judgment, would be the percentage of all the sportswear that is done by jobbers in Boston, by this list of jobbers that you have just examined here? Do you feel qualified to answer that question?

The WITNESS. I believe so, your Honor, but I want
314 to get the question straight.

The COURT. What percentage of all the business, of this ladies' sportswear business—

The WITNESS. In Boston?

The COURT. —is manufactured in Boston?

The WITNESS. I would say anywhere from 80 to 90 per cent.

The COURT. There are 22 signatories to it.

The WITNESS. I would say anywhere between 80 and 90 per cent. I think it may be somewhere in between.

The COURT. All right.

The WITNESS. Of course that is not only 22 firms, your Honor, because they are giving out the work to contractors which goes into this too.

The COURT. But they initiate that business?

The WITNESS. That is correct.

The COURT. They initiate all that business?

The WITNESS. That is correct. These 22 firms are not the only ones manufacturing. They may have 20 or 25 contractors manufacturing for them.

The COURT. That is true. These men are really in business as brokers to secure the work and then let it out to someone else to manufacture.

The WITNESS. That is correct. Some of these people on this list don't employ any help at all to manufacture. They may have a cutter but they send it out to the contractor to sew it up and he does it and sends back the finished goods. But some of these people that are on this list are some of the larger shops but there are a few that don't employ any manufacturing help at all. Those are the ones that we call jobbers.

315

The COURT. A man in that situation could operate that business in a very small store, couldn't he?

The WITNESS. Small office.

The COURT. Or office. How much does this business of what you might call the Boston group fit into the national picture, how large a part? Are you qualified to answer that?

The WITNESS. I would say it is very difficult.

The COURT. That is, the whole, entire industry in the United States?

The WITNESS. We have all told, your Honor, about 90 per cent of the industry organized; and we have, I would say, between 1,000 and 1100 members. There are 13,000, between 12,000 and 13,000.

The COURT. And how many workers in your union are engaged in this sportswear business here in Boston?

The WITNESS. There are between 1,000 and 1,100.

The COURT. 1,000 and 1,100 that are employed in this particular industry, that is, the women's sportswear industry?

316

The WITNESS. That is correct.

The COURT. And of the contractors engaged in this industry in Boston, what percentage of them are non-union shops?

The WITNESS. I would say about 6 or 7 per cent.

The COURT. Your particular union has been organized in this field for about 20 years?

The WITNESS. More than that, your Honor.

The COURT. More than that?

The WITNESS. I joined the union in nineteen hundred--

The COURT. Here in Boston?

The WITNESS. Yes, sir. I joined the union in 1920.

The COURT. 1920?

The WITNESS. 1920, and I was actively engaged organizing the industry before that. The union in Boston has been in existence since 1903.

The COURT. Are any of these garments let out to so-called home work?

The WITNESS. Not now, your Honor. Just a very few instances. Once in a while you find a case of that nature, but very few.

The COURT. It is pretty well eliminated now?

The WITNESS. Yes. Those old sweatshop days are a thing of the past.

317 The COURT. I think that is all.

Mr. MALLOY. May I ask one or two more questions, your Honor?

Q. [By Mr. Malloy] Mr. Kramer, in Los Angeles do they make the same type sportswear that they make in Boston?

A. They make the same type sportswear and they make a different kind of sportswear.

Q. What materials do they use in the sportswear made in Los Angeles?

A. The same as they do here.

Q. Do they make as large a percentage of woolens in sportswear in Los Angeles as they do here?

A. A much larger percentage.

Q. That is, what I mean is, do the Los Angeles sportswear people make mainly woolen sportswear, or would it be rayons and cottons?

A. I would say they made a larger percentage of cottons. But that wasn't your question.

Q. In Boston what is the largest percentage, what material is used?

A. The largest percentage is wool.

Q. But Los Angeles would be cotton?

A. That is correct.

The COURT. That is, the climate has a lot to do with it?

The WITNESS. Yes.

Mr. MALLOY. That is all.

Re-direct Examination by Mr. BERGSON:

Q. I am not sure that I got the answer that you
318 gave to his Honor in reference to the people who had signed up this agreement, Exhibit 4. You got 22 firms here that are signed up on this agreement. How many firms in 1944, to your knowledge, were located here in Boston and engaged in the manufacture of women's sportswear?

A. From this list?

Q. No, how many, whether on the list or not?

A. In 1944 I would say that we had under oral or written agreement about 30-odd firms.

Q. There were many firms that were not under any agreement with you?

A. That is right.

Q. But how many—what I wanted to get at, how many firms or concerns were there in Boston that had been here in 1944 making women's sportswear?

A. To my knowledge, there was about 70-odd.

Q. Now, of the total volume of sportswear that was made in the Boston area by all firms, have you an opinion that comes to you as to how much of that total volume was made by these 22 firms whose names appear on Exhibit 4?

A. I would venture only a guess on that.

Q. Well, I won't ask for that but could you estimate?

A. I could venture only a guess. I would estimate approximately 80 or 90 per cent.

319 Q. Did these 22 out of the 75 firms in Boston make 80 to 90 per cent of the sportswear?

A. It wasn't 22. They employ twenty odd contractors. That makes them about forty firms.

The Court: Mr. Bergson I think wants you to consider the fact that according to their testimony in September, 1944, there were 70 or 75 of these so-called brokers.

Mr. Bergson: I mean the people who sold the finished product.

The Court. Manufacturers.

The Witness. You didn't give me a chance.

Q. What I am getting at is this: All these that appear on Exhibit 4 are people who sold merchandise; is that correct?

The Court. Finished product.

Q. Sold the finished product?

A. Yes, to the retail stores.

Q. To the retail stores,—all right. Now, how many firms were there in the Boston area that sold the finished product to retail firms, if you know?

A. I would say about—in addition to those there would be about another four or five firms, in addition to those in 1944.

Q. And in addition to that were there some who had no relation at all with your union?

A. That is right.

Q. How many were there?

A. In 1944 there were many firms on this list that had no relations with my union.

Q. All right. But in addition to that list.

A. Another four or five.

320 Q. Now, what I want to get at is this, and his Honor I take it wanted the same answer: Of the total volume of women's sportswear that was sold from the Boston area—

The Court. Manufactured in Boston.

Q. —manufactured here and sold from the Boston area, how much of that were these signatories responsible for?

A. I would say between 80 and 90 per cent.

Q. Now, how many contractors—and by contractors I mean those who just did the stitching—how many contractors were there working on women's sportswear in September of 1944, if you know?

A. About 40.

Q. Were those all union ones?

A. No.

Q. Union and non-union?

A. That's right.

Q. Now, in addition to the contractors who were working on women's sportswear, how many manufacturers were manufacturing their own sportswear?

A. You mean without working with contractors?

Q. Without working with contractors.

A. I only know of one firm.

The Court. Which one is that, by the way?

The Witness. The Madison Sportswear.

The Court. We haven't heard about that firm yet.

Mr. Bergson. No.

The Court. There was one firm, one of the officers of the firm testified that they manufactured about 60 or 65 per cent.

Mr. Bergson. In their own shop.

The Court. In their own shop.

The Witness. Your question is, that didn't use
321 any contractors at all?

Mr. Bergson. That is right.

The Court. They had their own organization and manufactured in their own shop.

The Witness. That is not true right now. Right now everybody—

Q. No. I am talking about September, 1944. Are you familiar with the amount of work done in the various contracting shops in a general way?

A. You mean whether I know how many units they can produce?

Q. In a general way, yes, how big the shops are.

A. It would only be a rough guessing.

Q. I know, but you have an opinion?

A. I have an opinion.

Q. Now, Mr. Kramer, will you look at this list, which is a list of the defendants, the persons that are named as defendants in this action? Outside of the first one, which is the Association, starting with Kay's Sportswear, Inc. and ending with Bella Kritchman, and looking that over, do you think that you could give an opinion as to what proportion of the work is done by—

The COURT. This particular group.

Q. —by this particular group as compared to the whole group, in September, 1944?

A. A rough guess would be about a 50-50 basis in 1944.

The COURT. 50 per cent they controlled?

The WITNESS. About 50 per cent.

322 Mr. BERGSON. That is all.

Re-cross Examination by Mr. MALLOY:

Q. Just one question. Mr. Kramer, the contractors are not eligible for membership in your union, are they?

A. No.

Q. They don't belong to your union?

A. No.

Q. These contractors own or lease sewing machines? Do you call at their shops?

A. Sometimes they do and sometimes they don't.

Q. You mean some of them operate entirely by hand?

A. No.

The COURT. They all have machines?

The WITNESS. They all have machines, but whether they own them or not—

The COURT. Some of them own them, some of them rent them?

The WITNESS. Yes.

Q. I don't mean they necessarily have title to them. They have them in their shops?

A. They have them in their shops.

Q. Either own them or lease them on some financial basis?

A. Some are mortgaged to the jobbers they work for.

The COURT. They don't lease the machines like the United Shoe Machinery?

The WITNESS. No. They either own them or somebody else owns them.

The COURT. There are just one or two more ques-
323 tions. Of course in your capacity as an official of the union you were interested in getting membership in your union of operators in this particular trade?

The WITNESS. Yes, your Honor.

The COURT. Now, the manufacturers, so-called manufacturers or brokers, as you have testified in most instances did

not employ persons who were eligible for membership in your craft?

The WITNESS. Yes, sir.

The COURT. Bookkeepers and so forth would not be eligible?

The WITNESS. No.

The COURT. How about cutters?

The WITNESS. They are.

The COURT. But in most instances these people do not employ many help who are eligible?

The WITNESS. They would employ one or two. In this particular instance there is Debby Lou. On these contracts he employed four or five cutters.

The COURT. But the contractors do hire people who are all eligible for membership in your union?

The WITNESS. Those that work for the contractors, that work in the process of manufacturing the garment.

The COURT. They are eligible for membership in your union?

The WITNESS. Yes, sir.

324 The COURT. I suppose everyone they employ would be eligible other than a bookkeeper or something of that sort?

The WITNESS. A shipper wouldn't belong there.

The COURT. So that your business was mainly with the contractors, wasn't it, in trying to get these people that were in this craft in your union?

The WITNESS. Not necessarily. One is as important as the other. I need one in order to be able to have some control of the other.

325 The COURT. That is what I mean, the brokers or manufacturers have few people who are eligible for membership?

The WITNESS. That is correct.

The COURT. On the other hand, most all of the employees of the contractors were eligible for membership?

The WITNESS. Yes, your Honor.

The COURT. So your natural approach would be to the contractor, to sign up the contractor?

The WITNESS. Yes, your Honor.

The COURT. To sign up the contractor, to make his shop a union shop?

The WITNESS. Yes, your Honor.

The COURT. And your only purpose in seeing a broker was to sort of strengthen that situation, to get a broker to let out these contracts to contractors whose shops were unionized?

The WITNESS. That is correct, your Honor.

The COURT. You wanted to fortify that situation, if possible?

The WITNESS. That is correct.

Re-direct Examination by Mr. BERGSON:

Q. I forgot to ask you one question, Mr. Kramer, and that was this. These contractors did all the stitching. Was it customary in the trade for the contractor to furnish buttons and hooks and eyes, do you know?

326 A. It all depended upon the arrangements they had with the jobbers. In a good many instances, the jobber or manufacturer they worked for would furnish the buttons and trimmings, and sometimes even the thread.

Q. In the case where the contractor himself furnished the buttons and the hooks and the eyes, do you happen to know what percentage of the price that was paid to the contractor was represented by this material that was furnished by the contractor?

A. I had nothing to do with piece goods or piece goods prices.

The COURT. Have you an opinion?

The WITNESS. No, I haven't.

The COURT. Well, you do have an opinion, don't you, as to the percentage that the labor costs bore to the retail or the sales price by the manufacturer of this whole garment?

The WITNESS. No, I haven't.

The COURT. You say as a labor man you haven't got those statistics as to labor costs, or anything like that?

The WITNESS. No. I tell you why, your Honor. Styles change so rapidly in our industry, you cannot keep up with them, because a garment that costs 65 cents today, tomorrow will cost 85 cents. And they may be working on ten different styles at ten different prices.

The COURT. Isn't that a pretty vital statistic for you as a labor man to know?

327 The WITNESS. It is vitally important, your Honor, but it is very difficult to keep up with in our industry. It is not like a standardized garment. They have it down to a standardized basis, cost of production.

The COURT. Both you gentlemen are finished with this witness?

Mr. BERGSON. Yes.

Mr. MALLOY. Yes, your Honor.

The COURT. We will take a short recess.

[Short recess.]

Mr. Bergson. Your Honor please, I think I will rest at this point. Mr. Malloy and I would like to consult your Honor's convenience as to future steps in this case. Neither of us is prepared to argue at this minute. We will get the transcript of the evidence, I assume, tomorrow.

The Court. All right, you may argue, if you care to argue orally, and I will set a date for it; or you can submit it on briefs, if you want to, and dispense with arguments. That is entirely up to you gentlemen.

Mr. Bergson. What I thought was this. This is of course for your Honor's convenience, and I don't know whether or not your Honor wants to do it. I thought that if we had a little time after we get this testimony, both sides would prepare findings of fact which each side thinks the evidence warrants, and on those facts the conclusions of law
328 which each side thinks the Court ought to follow; and then it might be desirable to argue at that time, when we present the findings of fact and conclusions of law.

The Court. Yes.

Mr. Bergson. And then if your Honor still thinks that you would like to have a brief at that time, I think we ought to be prepared with a brief; but we have already furnished you with preliminary briefs. I don't know how extensive they are, or how full they are, how your Honor regards them, whether there is more that you would like to have.

The Court. I think your approach has been a very excellent one. Do you agree that that is so?

Mr. Malloy. Yes, your Honor. The Government does not think it necessary to argue the matter, but if that is desirable we are certainly willing to do so, and to submit, as Mr. Bergson suggests, requests for findings of fact and conclusions of law supported by some authority.

The Court. I have never had that sort of an arrangement before except in one case, by one of the attorneys in some litigation that I heard. And instead of submitting a brief, he did exactly as Mr. Bergson has stated here, and his authorities were all in there supporting the various particular conclusions of law.

Mr. Bergson. Exactly.

The Court. And then of course the evidence sup-
329 porting the facts, and I thought it was a very excellent way to handle the matter. It would be entirely agreeable to the Court if you followed out that plan.

Mr. Bergson. My reason for suggesting the oral arguments is not that I like to hear the sound of my voice, but I sometimes find that it develops into sort of a running discussion between counsel and the Court, and it is very helpful then to both sides.

The COURT. That is true. By the way, Mr. Malloy, I presume this was a deposition that you had taken?

Mr. MALLOY. Yes, your Honor. We do not desire to offer it.

The COURT. I think I will just turn that over to the clerk, and let him hold it in his office.

Mr. BERGSON. And does your Honor want to set the time?

The COURT. Yes. I will give you as much time as you think you ought to have, gentlemen, for that purpose.

Mr. BERGSON. I should think two weeks.

Mr. MALLOY. That will be entirely satisfactory, your Honor.

The COURT. That is all right. I suppose, Mr. Bergson, that you want for the record a ruling on your motion for judgment at the close of the evidence?

Mr. BERGSON. Yes.

The COURT. And I am going to deny it. Let that be on the record, that you at the close of all the evidence
330 renewed your same motion.

Mr. BERGSON. The same motion for judgment; yes, sir.

The COURT. All right, sir.

Mr. BERGSON. Will your Honor then set a time?

The COURT. Yes, I will. The 28th day of February. Is that satisfactory?

Mr. BERGSON. Yes.

Mr. MALLOY. Yes, your Honor.

Mr. BERGSON. At what time?

The COURT. I cannot very well set that without consulting my diary, to see what my engagements are. I suppose if you could get here at 2 o'clock that would be sufficient time for you gentlemen?

Mr. BERGSON. I should think so.

The COURT. I will set this date tentatively as the 28th of February at 2 o'clock.

[Adjourned at 3:47 p. m.]

We, William H. Matheson, Richard J. Martin, and Emilie Burford Murray, Official Reporters of the United States District Court, do hereby certify that the foregoing transcript, from pages 1 to 272 inclusive, constitutes to the best of our skill and ability a true and accurate transcription of our shorthand notes taken in the above-entitled cause.

WILLIAM H. MATHESON,
RICHARD J. MARTIN,
EMILIE BURFORD MURRAY.

[Memorandum:

*Pages of stenographic transcript numbered 1 to 272, inclusive—numbers of pages in transcript of record are 62 to 330, inclusive. John A. Canavan, Clerk.]

331 In United States District Court

Request of The United States of America for Findings of Fact and Conclusions of Law

The United States of America, by its attorneys, submits herewith its request for Findings of Fact and Conclusions of Law based upon the evidence adduced at the trial of the above-captioned cause on February 13 and 14, 1947.

FINDINGS OF FACT

1. Women's sportswear consists generally of jackets, skirts, slacks, shorts, blouses and jumper dresses made from wool, rayon and cotton fabrics. The manufacturers of women's sportswear are more commonly known in the trade as jobbers. Boston jobbers maintain places of business in the city and vicinity where they cut the cloth or piece goods according to the patterns designed by them and ordered by the purchasers. In order to secure orders for sportswear, substantially all Boston jobbers maintain sales offices in New York City. Some have established sales offices in other cities, such as Chicago, Los Angeles and San Francisco. Substantially all of the jobbers employ salesmen who travel throughout the United States soliciting orders for sportswear.

332 2. As a general rule, jobbers do not purchase piece goods until they have received orders for finished sportswear. Even though a jobber may at times maintain an inventory of cloth, the amount of the inventory and the amount of the cloth purchased depend upon specific orders for finished sportswear obtained by the jobber's salesmen. Jobbers make their purchases through New York sales offices of the cloth-producing mills. The mills are located in such states as Maine, New Hampshire, Massachusetts, Rhode Island, New York, Pennsylvania, West Virginia and Tennessee. Sometimes the purchased cloth is sent to the jobber's Boston place of business directly from the mill and sometimes it is sent to him from the mill agent in New York. At least 50 percent of the
333 cloth used in the production of sportswear by the Boston jobbers is manufactured in mills located outside of the Commonwealth of Massachusetts.

334 3. The jobbers do not, as a general rule, stitch the cloth after it has been cut to pattern. For that purpose they employ those in the trade known as contractors to whom they furnish the cut cloth. The defendant contractors have shops or factories in Boston, where they have installed sewing machines. The contractors hire employees to stitch the garments and to affix the necessary

ornaments. The defendant contractors do at least 50 percent of all the stitching of sportswear produced in Boston.

335 4. It is the custom in the trade for the contractors to return the finished garments to the jobber, who immediately sends them to the purchasers. Jobbers do not stock finished sportswear. About 85 percent of the finished sportswear produced in Boston is sold to purchasers who are located outside of the Commonwealth of Massachusetts. The 21 jobbers who are signatories to the agreement with the defendant association (hereinafter discussed) manufacture between 65 and 70 percent of all the women's sportswear produced in Boston. The annual gross value of the garments sold by them is in excess of $10,000,000.

336 5. The cost of stitching sportswear garments amounts to approximately 1/5 to 1/3 of the sales price of the garment.

6. The defendant Women's Sportswear Manufacturers Association was organized some time prior to December 21, 1943. It is an unincorporated association with a place of business in Boston, Massachusetts and is composed of contractors who perform stitching services on women's sportswear. All of the defendant contractors named in the Complaint as being members of the defendant Association were members of the Association during the period from March 1, 1944 to the date of filing of the Com-

337 plaint, except Hyman Medoff. The defendant Jacob Weinberg has died since the filing of the Complaint and the Complaint has been dismissed as to him. The defendants named in the Complaint as officers and members of the executive committee of the defendant Association held their alleged positions during the period from March 1, 1944 to the date of filing of the Complaint. The Association held meetings at the call of the secretary who kept minutes of the meetings. The defendant Bernard D. Rosenberg was engaged as the Executive Director of the defendant Association on December 21, 1943 and has occupied that position to the present time.

339 7. On or about March 1, 1944, the defendants in combination adopted a form of written agreement which they intended to compel all Boston jobbers to execute. That proposed written agreement required the jobber to employ only members of the defendant Association to refrain from dealing with non-member contractors, to distribute his work equitably among the Association contractors engaged by him, to furnish the contractor with written orders setting out the price for the work, to refrain from

accepting secret rebates, and to pay to the contractor the amount of the unemployment compensation insurance, health and vacation fund and Labor Day pay attributable to the services of the contractors' employees.

341 8. Beginning on or about March 1, 1944, the defendants communicated with and contacted the Boston jobbers in an endeavor to have the jobbers sign the Association agreement prepared by the defendants. The defendants threatened to boycott the jobbers if the agreement were not signed. Despite the defendants' soli-
342 citations and threats, the jobbers had still refused to sign the proposed contract on September 26, 1944. On that date the defendant Rosenberg, by letter to a jobber representative, threatened stoppage of production by the Association on October 2, if the matter were not adjusted by September 30. Shortly after September 25, a conference was held between representatives of the jobbers and representatives of the defendants to consider the proposed agreement. Although the defendants repeated their boycott threats, the jobbers persisted in their refusal to execute the agreement and asserted that it was illegal.

345 9. After the jobbers refused to sign the defendant Association agreement, work was stopped in the shops of contractors for Kenniston Klassics, Banner Sportswear and College-Town Sportswear on October 2, 1944, the date predicted by the defendant Rosenberg. The contractors who thus ceased work were processing garments, over 85% of which had been ordered by purchasers located outside of the Commonwealth of Massachusetts. When the jobbers involved in the work
346 stoppage inquired of their contractors as to the reasons therefor, they were informed production was stopped because the jobbers had not signed the Association contract. Thereupon, the three jobbers obtained a restraining order in the state courts. Thereafter, further negotiations took place, conferences were held between jobbers and contractors, the proposed agreement was revised and, as so revised, was signed on October 17, 1944.

347 10. Twenty-one jobbers, who sold 65 to 70 percent of all the sportswear produced in Boston, were thus compelled by the defendants to sign the Association agreement on October 17, 1944. The signed agreement required the signatory jobbers to furnish work only to members of the defendant Association. Through its provisions requiring the jobber to distribute his work equitably among Association contractors engaged by him and to furnish the contractor with a written order setting out the price and forbidding the granting of secret rebates, the agree-

ment not only was designed to eliminate competition among member contractors, but also provided the means for fixing and maintaining prices. The agreement required the jobber to deduct from the amount due the contractor a sum computed by the defendant Association to cover unemployment compensation insurance and the health and vacation fund of the contractors' employees. The executed contract provided for compulsory arbitration of disputes between jobber and contractor and set up the mechanics for the arbitration. It made all individual agreements between jobber and contractor subject to its provisions. The agreement of October 17, 1944 remains in effect.

348

350 11. The prices charged by contractors for stitching were substantially uniform. Defendant contractors discussed prices at meetings of the defendant Association and announced prices that they charged jobbers. One of the purposes of the defendant Association was to fix and maintain uniform and stabilized prices.

351 12. The threats of boycott unless the jobbers signed an agreement with the Association, contained in the defendant Rosenberg's three letters (Pl. Exs. 2, 6 and 7) and the similar verbal threats made by him at conferences with the jobbers have been in no way denied, qualified or explained.

352 13. One of the reasons work was stopped on October 2, 1944 on sportswear furnished to contractors for stitching by Kenniston Klassics, College-Town Sportswear and Banner Sportswear was because these three jobbers had not signed the agreement of the defendant Association.

355 14. The defendant contractors are independent businessmen who own sewing machines and employ labor. They are not members of and are not qualified for membership in the ILGWU. The Union did not participate in drawing up the proposed drafts whereby the Association sought to have the jobbers give their work exclusively to members of the defendant Association. In the Union's agreements with jobbers it was not required that the jobbers should give their work only to members of the defendant Association. The Union's sole interest was in securing employment for its members with the jobbers and the contractors. There is no labor dispute involved in this case.

356 15. The defendants initiated action to carry out those provisions of the agreement of October 17, 1944, requiring the jobber to deal exclusively with members of the defendant Association and to distribute his work equitably among them.

357 CONCLUSIONS OF LAW

1. The complaint alleges a violation of Sec. 1 of the Sherman Act. The gist of the offense condemned by that Act is the conspiracy or agreement to restrain interstate commerce. Hence, to establish a violation, no overt act need be shown and it is immaterial that the conspirators never carried out their agreement, or tried to carry it out and failed, or did not have the power to effectuate it.

358 2. Specific intent to restrain interstate commerce is not a necessary element of the offense prohibited by the Sherman Act. The conspirators must be held to have intended the necessary and direct consequences of their acts.

3. That the defendant contractors combined or conspired in violation of Section 1 of the Sherman Act may be found from the evidence. Such a combination or conspiracy is seldom capable of proof by direct testimony and may be inferred from the things actually done, or may be implied from a course of dealing or other circumstances. It is not necessary that there be a formal agreement; it is sufficient that there be a tacit understanding followed by action in furtherance thereof.

4. The unsuccessful attempts by the contractors, acting in concert, to get the jobbers to sign Plaintiff's Exhibits 3 and 5 show that it was the purpose and intent of the combination to have the jobbers sign a contract which required that they have their stitching work done exclusively by members of the defendant association. Such concerted action proves a conspiracy which violates the Sherman Act although the attempts failed and the contracts were never signed.

359 5. Jobbers manufacturing 65 to 70 percent of the women's sportswear produced in Boston have, through the concerted action of the defendant contractors, been required to sign a contract setting forth the terms under which the jobbers may get such sportswear stitched into a completed garment. This concerted action by a combination to compel others to do business only on terms imposed by the combination violates the Sherman Act.

6. The liberty of 21 jobbers to engage in their interstate business of manufacturing women's sportswear has been restricted by the defendants' concerted requirement that the jobbers sign a uniform contract. Such a restriction violates Sec. 1 of the Sherman Act irrespective of the nature of the provisions of the contract.

360 7. The signed agreement of October 17, 1944, Plaintiff's Exhibit 4, requires the signatory jobbers to arbitrate all matters in dispute between the jobbers and

the contractors. Such compulsory arbitration though it may be well adapted to the needs of the sportswear industry, violates the Sherman Act when required by a combination as a condition of doing business.

8. The unsigned drafts of agreements proposed by the contractors and the signed agreement of October 17, 1944 (Pl. Exs. 3, 5 and 4 respectively), with their provisions that the jobbers must deal exclusively with the defendant contractors, show that it was the purpose and intent of the combination to exclude other contractors from the opportunity to furnish stitching services to the jobbers. Such a concerted exclusion of other contractors from the industry is a restraint condemned by the Sherman Act.

361 9. The provisions of the proposed and signed agreements (Pl. Exs. 3-5) requiring an equitable distribution of the jobber's work among the member-contractors engaged by him eliminated competition among such contractors. That elimination of competition is prohibited by the Sherman Act.

10. The provisions of the contract of October 17, 1944 requiring the jobber to furnish the contractor with written orders setting out the price the jobber will be paid, forbidding secret rebates, and requiring pro rata distribution among contractors, coupled with the testimony that contractors discussed prices at the meetings of the Association, and that the purpose of the Association was to keep prices from coming down after the war, evidence a scheme on part of the defendants to fix and maintain prices. A price-fixing agreement is a violation of the Sherman Act *per se*.

11. By acting in concert and agreeing to boycott the jobbers unless they signed a uniform contract, the defendants restrained trade in violation of the Sherman Act since it is established beyond dispute that the use of a boycott to compel others to do business on terms established by the boycotters is unlawful.

362 12. In order that there be a restraint of interstate commerce in violation of the Sherman Act it is not necessary that the contractors themselves be engaged in that commerce, nor is it material that they are engaged in what may be called a "local" activity. The Act denounces every direct restraint of such commerce, including those that are to be carried on by interstate transactions.

13. The Sherman Antitrust Act may be violated by restraints imposed before the interstate movement of the commodity begins; after the interstate journey ends; or at a point between the origin and the destination of the

commodity. Therefore, whether the concerted activities of the defendants have restrained the interstate commerce of cloth at its destination or have restrained the interstate commerce in the finished garments before their interstate journey begins, is immaterial. Those activities have imposed a direct restraint upon interstate commerce that is prohibited by the Sherman Act.

363 14. The stitching of women's sportswear is an essential service in the promotion of a free interstate movement of the finished product. Therefore, the imposition of restrictions on those services directly restrains interstate commerce.

15. The temporary stoppage of the cloth in Boston for the cutting and stitching does not remove that commodity from the protection afforded interstate commerce.

16. Seventy-five percent of the women's sportswear manufactured in Boston is produced from cloth coming from mills located outside of Massachusetts. Jobbers maintain sales offices in New York City and orders for this sportswear are solicited throughout the United States. Approximately 85 percent of the finished women's sportswear is shipped interstate. The jobbers are, therefore, clearly engaged in interstate commerce and the restraint here imposed by the contractors upon the right of the jobbers to engage in their business without restriction is an illegal restraint upon interstate trade prohibited by the Sherman Act.

17. In an action under the Sherman Act alleging a conspiracy to restrain interstate commerce, the amount of commerce restrained is immaterial. It is not necessary to show that total supression of competition has occurred and it is of no consequence that women's sportswear manufactured in Boston is in competition with similar garments produced in other cities.

364 18. The defendant contractors, as members of the defendant Association, are not an association of employees exempted from the provisions of the Sherman Act by the Clayton and Norris-LaGuardia Acts since they are not members of, or qualified to hold membership in, a labor union. On the contrary, they are independent businessmen, owning sewing machines, maintaining shops, and employing labor to operate the machines to sew the cut cloth into finished women's sportswear.

19. The activities of the defendants would not be exempted from the operation of the Sherman Act even if a labor union were involved because a labor union, prompted by a desire to get and hold jobs for and promote the

365 interests of its members, may not legally combine with businessmen to restrain interstate commerce.

20. The failure of the defendant Rosenberg to take the stand to deny or to explain the threats of boycott made by him in letters, and verbal statements, to jobbers, creates a reasonable inference that he was not able to combat or explain away such evidence. Similarly, from the failure of Herscowitz, Karger and Fisher to deny statements attributed to them that they stopped work because of the failure of the jobbers to sign the Association agreement, it justly may be inferred that they were not in position to make such denials or to give such explanations.

21. The court has jurisdiction of this cause under the provisions of the Act of July 2, 1890 entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," hereinafter referred to as the Sherman Act.

22. Beginning in the month of March, 1944 and continuing to the present time, the defendants have been and are now engaged in an unlawful combination and conspiracy to force all jobbers of women's sportswear located in the Boston area to contract exclusively with the Wo-
366 men's Sportswear Manufacturers Association and its members for their stitching requirements on women's sportswear garments manufactured by such jobbers in violation of Section 1 of the Sherman Act.

Respectfully submitted,

GRANT W. KELLEHER,
Special Assistant to the Attorney General.
JAMES M. MALLOY,
WILLIAM D. KILGORE, JR.,
Special Attorneys.

WENDELL BERGE,
Assistant Attorney General.

367 In the United States District Court

Defendants' proposed findings of fact and rulings of law

And now comes the defendants in the above entitled cause and propose to the Court the following findings of facts and rulings of law for adoption by the Court.

Proposed findings of fact

1. The defendants are engaged solely in production, consisting of stitching garments which belong to other persons who are known in the sportswear trade as jobbers.

2. The activities of the defendants are wholly within the limits of the Commonwealth of Massachusetts.

3. The defendants are not engaged in interstate trade or commerce.

4. There is no evidence upon which the Court can base an estimate of the total volume of women's sportswear manufactured in the United States.

5. The women's sportswear manufactured in the Boston area is sold in interstate commerce in competition with women's sportswear manufactured in other areas within the United States such as Los Angeles, New York, Chicago, St. Louis, Philadelphia and Dallas.

368 6. The amount of women's sportswear manufactured in the Boston area measured by the number of workers employed in the sportswear industry in the Boston area as compared with the number of workers employed in other areas manufacturing sportswear is very small, approximating less than five per cent.

7. The amount of women's sportswear manufactured by the defendants represents about fifty per cent of the amount manufactured in the Boston area.

8. The defendant association does not designate which contractor shall work for a jobber who has signed the agreement of October 17, 1944 (Exhibit 4) with the defendant association.

9. Defendants are not engaged in an unlawful combination or conspiracy to force all jobbers of women's sportswear located in the Boston area to contract exclusively with the defendant association for their stitching requirements.

10. The agreement between the jobbers and the defendant association dated October 17, 1944 (Exhibit 4) does not restrain interstate commerce.

11. Defendants have not agreed to require all jobbers, under threat of boycott or blacklisting, (a) to require all jobbers of women's sportswear located in the Boston area to contract exclusively with the defendant association and its members for their stitching requirements, (b) to prohibit any jobber from performing stitching work on garments manufactured by such jobbers, (c) to prohibit any jobber from performing stitching work for other jobbers, (d) to prohibit any jobber from renewing a stitching contract with any contractor who is not a member of the association, (e) to force competing contractors to become members of the association by prohibiting jobbers from making any contracts with such contractors, (f) to require all jobbers to sign contracts with the association as a condition precedent to performance of any stitching work.

369 12. Defendants have not agreed to eliminate all competition among themselves with respect to volume of business to be done by each, by requiring that each jobber distribute his stitching work among the particular members of the association as determined by the defendants in fixed percentages, regardless of the jobbers' volume.

13. Defendants have not agreed to eliminate all price competition among themselves by refusing to permit any jobber to select the particular stitching contractor whose services are desired.

14. Defendants have not agreed to require jobbers to pay to the association a fixed percentage of the monies owed to contractor members, such funds to be used to carry on any boycotting or blacklisting activities.

15. Defendant association and its members have not entered into any agreement which has as its purpose to fix the price of goods which flow into interstate commerce, or to regulate the flow of goods in interstate commerce, or to unreasonably enhance to the ultimate consumer the price of goods which flow in interstate commerce.

16. There is no evidence that any of the activities of the defendants had any effect whatsoever on the price of women's sportswear in interstate commerce.

17. There is no evidence that any of the activities of the defendants had any effect on the quantity of women's sportswear sold in interstate commerce.

18. The defendant association was formed to carry out the purposes as set forth in the preamble to the agreement of October 17, 1944 (Exhibit 4).

19. The agreement of October 17, 1944 (Exhibit 4) was entered into for the purpose of eliminating certain evil and unlawful practices in the women's sportswear
370 industry and the terms of the agreement are well calculated to carry out said purposes.

20. The work stoppages of September, 1944 were ordered by the union for its own purposes and not by the defendant association.

21. The effect of such work stoppages on interstate commerce was nil.

Conclusions of Law

1. The defendant association is a combination of persons engaged in wholly intrastate activities, the object of which is confined to purely local matters, and no interference with interstate commerce is intended or desired, and their actions do not directly and substantially affect interstate commerce and therefore the defendants forming the defendant association have not violated Section 1 of the Sherman Act.

2. Even if the defendants be considered to be engaged in interstate commerce, forming an association to correct abuses in their industry, and by such cooperative action endeavoring to correct the abuses does not necessarily constitute an unreasonable restraint of trade, where the cooperating group, as here, must still meet effective competition in a fair market, and where the group, as here, neither seeks nor is able to effect a domination of prices.

371 3. The defendants are engaged solely in performing stitching upon garments belonging to other persons and therefore the defendants are not engaged in trade or commerce within the meaning of Section 1 of the Sherman Act.

4. The fact that the defendants are engaged in stitching operations and sometimes furnish buttons and ornaments does not transform the principal character of their work; the doctrine of "De Minimus non Curat Lex", is applicable.

5. Defendants' acts are purely intrastate, and any acts done by them to restrain production are not in violation of Chapter 1 Section 17, of Title 15 U. S. C. A.

6. The activities of the defendants who are not directly engaged in interstate commerce, are not subject to Chapter 1, Section 1 of Title 15, U. S. C. A., because they are not intended to restrain interstate trade or commerce by fixing prices or eliminating competition to the damage of the ultimate consumer.

7. Defendants' acts are not such as must directly, inevitably and substantially affect interstate trade or commerce.

372 8. Upon all the evidence, the defendants and the defendant association have not and are not violating Chapter 1, Section 1 of Title 15, U. S. C. A.

9. The plaintiff has failed to support its complaint by competent evidence and judgment therefor is to be entered for the defendants.

Respectfully submitted,

HARRY BERGSON,
HARRY BERGSON, JR.,
Attorneys for defendants.

373 *Plaintiff's Exhibit 1*

WHOLESALE GARMENT ASSOCIATION
Seventy-five Kneeland Street
Boston, Massachusetts

HANCOCK 3717

September 23, 1941

Mr. Bernard D. Rosenberg, Executive Director
Womens' Sportswear Manufacturers Association
260 Tremont St.
Boston, Mass.

My dear Mr. Rosenberg:

It has come to my attention that your Association representing the sportswear contractors of Boston has been conferring with individual members of my Association with a view to having a labor contract signed. It has also been called to my attention that a general stoppage of the contractors has been set by Monday.

Inasmuch as a great number of the individuals with whom you have conferred are members of my Association, I would personally appreciate your organization holding off any action for a period of one week in order that I may get this group together in an effort to amicably settle this matter.

Very truly yours,

WHOLESALE GARMENT ASSOCIATION
By: LAURENCE H. RICHMOND
Executive Director

LHR:RGG

"Buy In Boston"

374 *Plaintiff's Exhibit 2*

TEL. HANCOCK 4306 4307 SUITE 609 610 611

WOMEN'S SPORTSWEAR MANUFACTURERS ASSOCIATION
260 Tremont Street
Boston 11, Mass.

Bernard D. Rosenberg
Executive Director

September 25, 1944

Mr. Lawrence H. Richmond, Executive Director
Wholesale Garment Association
75 Kneeland St.
Boston, Mass.

My dear Mr. Richmond:

In reply to your letter of September 23rd, 1944, let me state that at a committee meeting held today, the general opinion was not to postpone the original plans of stopping production for the account of the Jobbers immediately.

It was only as a courtesy to you that I prevailed on my committee to wait.

However, I hope and trust that the matter can and will be adjusted by Saturday, September 30, 1944, otherwise, production will be stopped Monday morning, October 2, 1944.

Anticipating that you will be able to bring about an amicable and peaceful solution to this problem, I am,

Very truly yours,

WOMEN'S SPORTSWEAR MFG. ASS'N
By BERNARD D. ROSENBERG
Executive Director

iw/bdr

375 *Plaintiff's Exhibit 3*

KNOW ALL MEN BY THESE PRESENTS:

This Agreement made and entered into this ..... day of ....., 194.., by and between the WOMENS SPORTSWEAR MANUFACTURERS ASSOCIATION, of the City of Boston, County of Suffolk, Commonwealth of Massachusetts, hereinafter referred to as the Association, for and in behalf of itself and all its members, present and future, hereinafter designated as the Contractor; and ..... of the City of Boston, County of Suffolk, Commonwealth of Massachusetts, hereinafter designated as the Jobber.

Whereas, the parties hereto are desirous of establishing harmony and promoting the welfare of the sportswear manufacturing industry; to establish a basis of equitable and fair business conduct and dealing; to minimize as far as possible all industrial disputes, conflicts and difficulties, and to remove present abuses and evils which constitute causes of dispute and differences between Contractors and Jobbers, and provide for a speedy, inexpensive and efficient means of settlement and determination of such disputes.

Now, therefore, in consideration of the foregoing recitals and the mutual promises and agreements of the parties hereinafter set forth and for other good and valuable consideration, it is agreed as follows:

1. The Association shall furnish to the Jobbers to the best of its ability such Contractors out of its membership that the Jobbers may equitably require.

2. The Jobber shall employ or continue to employ only such Contractor or Contractors who are members of the Association, and the Jobber further agrees not to employ or in any way deal with such Contractor or Contractors who are not members of the Association.

376 / A. Pursuant to Paragraph 2, the Jobber shall not employ any additional Contractor unless the Jobber first calls upon the Association to furnish such additional Contractors, whereupon the Association shall submit a list of Association Contractors available, from which the Jobber shall make his selection, but the Jobber shall not engage at any time any more Contractors than is necessary to equitably and fairly meet the Jobber's needs.

B. The Jobber in the distribution of orders for the manufacture of garments, shall divide same as equally and equitably as possible among the Contractors engaged by him, and that of his own present existing shop, if such shop is in existence at the time of signing of this Agreement.

All bills submitted by the Contractor or Contractors shall be net, and the granting of secret rebates shall be in violation of this Agreement. In the event of the discovery of the granting of any secret rebates, the Jobber shall pay to the Association such an amount or amounts that may be established as having been rebated.

3. All orders given by the Jobber to the Contractor or Contractors shall be in writing with the price to be billed by the Contractor to the Jobber clearly set out on same.

4. It shall be considered a violation for any Contractor to submit styles to any other Jobber that were originally given to the Contractor for manufacture by the Jobber.

5. The Contractor shall have, and there is hereby created by this Agreement for his benefit, a lien on all goods, mer-

chandise, and materials shipped, sent or delivered
377 to him by the Jobber, whether or not the said goods, merchandise, or materials be manufactured into garments or otherwise, to the extent and amount of all moneys due and owing from the Jobber to the Contractor, by reason of the manufacture and delivery of any garments by the Contractor to the Jobber on any and all previous orders upon which payment has not been made.

6. WHEREAS, the Legislature of the Commonwealth of Massachusetts has, with the approval of the Governor of said Commonwealth, enacted a law termed the Massachusetts Unemployment Compensation Law, and

WHEREAS, by the terms of said Act, assessments are made by the Commonwealth of Massachusetts, in addition to further assessment made by the Federal Government, upon the employers for stipulated percentages of the wages paid to the employees, and

WHEREAS, it is the intention of both parties to the within Agreement that the ultimate burden of paying the assessment shall be upon the Jobbers and not the Contractors, and that the ultimate burden of supplying to the Commonwealth of Massachusetts and to the Federal Government, the information required by law to be furnished by the employer shall be upon the Contractor and not upon the Jobber,

NOW, THEREFORE, in order to pay said assessments to the Commonwealth of Massachusetts and the Federal Government, the Jobber agrees to pay the amount necessary to meet said assessments. It is understood and agreed that the above amount is separate and distinct from the price agreed to be paid for the manufacture of garment or garments by the Contractor. Said sum or sums to be computed each and every week based upon the weekly payroll.

378 7. WHEREAS, a great majority of the employers in this industry have entered into an agreement with the Joint Board of Cloak, Skirt and Dressmakers Union of the International Ladies Garment Workers Union of Boston, Mass., and

WHEREAS, by the terms of said agreement assessments are made upon the employer's and contractors for three percent of the wages paid to the employees to be known as the Health and Vacation fund, and

WHEREAS, it is the intention of both parties to the within agreement that the ultimate burden of paying said assessment shall be upon the jobber and not the contractors.

NOW, THEREFORE, in order to pay said assessment to aforesaid Union for and in behalf of the workers, the jobber agrees to pay the amount necessary to meet saitl assess-

ments. It is agreed and understood that the above amount is separate and distinct from the price agreed between the jobber and contractor for the manufacture of garments by the contractor. Said sum or sums to be computed each and every week based upon the weekly payroll.

8. WHEREAS, the contractor has obligated himself to pay his employees an extra days pay on Labor day, it is hereby agreed that the jobber will reimburse the contractor the amount of money for said extra Labor days pay.

Any violations of any of the provisions of this Agreement by either party shall not operate as a termination of this contract, nor shall any violation be deemed to run to the essence of this contract.

This Agreement shall become effective on the date hereof and shall remain in force and binding upon the parties hereto from year to year, unless previously terminated by either party upon written notice of not less than ten (10) days prior to its expiration.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals by their duly authorized representatives, this ..... day of ..... and year of 194..

.....
Jobber

.....
WOMENS SPORTSWEAR MANUFACTURERS ASS'N
By: .....

379 *Plaintiff's Exhibit 4*

AGREEMENT made this 17th day of October, 1944, by and between the WOMENS SPORTSWEAR MANUFACTURERS ASSOCIATION, of Boston, Massachusetts, hereinafter referred to as "ASSOCIATION", for and in behalf of itself and all its members and those who may hereafter become members, such member being hereinafter designated as "CONTRACTOR", and the individual jobbers whose signatures are hereto attached, each hereinafter designated as "JOBBER".

WHEREAS the members of the Association are engaged in furnishing labor for the manufacture of garments for the Jobber in the Boston area; and

WHEREAS the Association, Contractor, and Jobber are each in contractual relationship with the International Ladies' Garment Workers' Union, hereinafter called "I.L.G.W.U.", and have agreed with said I.L.G.W.U. to maintain certain labor standards, to pay certain standards of wages, and to assume certain obligations to the members of said I.L.G.W.U.; and

WHEREAS the parties hereto, in furtherance of their several obligations to said I.L.G.W.U., desire to establish a basis of equitable and fair business conduct and dealing; to assist each other in the development of the Boston market; to minimize, as far as possible, all industrial disputes, conflicts, and difficulties; and to remove present abuses and evils which constitute causes of dispute and differences between Contractor and Jobber, and provide for a specific, inexpensive, and efficient means of settlement and determination of all such disputes,

NOW, THEREFORE, in consideration of the sum of one dollar to each other paid, the receipt of which is hereby acknowledged, and in consideration of the foregoing premises, it is agreed as follows:

380 (1) The Jobber, having already agreed with said I.L.G.W.U. to employ only contractors who are in contractual relationship with said I.L.G.W.U., agrees to give all his work to members of the Association who are in good standing with said I.L.G.W.U., so long as members of the Association are available for performance of his work, and are comparable as to price and quality of work with other Contractors who are in contractual relationship with said I.L.G.W.U. and are not members of the Association.

In the event that any Contractor hereunder ceases to be a member of the Association, the Jobber shall be notified by said Association of said fact by registered mail, but said Contractor is to be allowed to finish Jobber's work already in hand. Any Contractor who is in contractual relationship with said I.L.G.W.U. now employed by any Jobber may continue working for said Jobber even if not a member of the Association.

(2) The Association agrees to assist the Jobber in getting sufficient contractors as the amount of work of the Jobber may equitably require, and the Jobber agrees that in the distribution of his work he will divide such work as equally and equitably as possible among the Association Contractors engaged by him.

(3) The Contractor agrees to complete all orders given to him by the Jobber with due regard to the delivery dates set forth in the written orders, and not to do any work for any Jobber not in contractual relationship with the said I.L.G.W.U.

(4) The Jobber agrees to pay for all work performed by the Contractor within twenty-four hours of the presentation of the weekly statement.

All orders given by the Jobber to the Contractor shall be in writing, with the price to be billed the Jobber clearly

set forth therein, and no secret rebates shall be given by any Contractor to any Jobber.

381 In the case of any secret rebates, the Association shall have the right to demand and receive from the Jobber the amount thereof.

(5) The Contractor and Jobber both agree that there shall be no pirating of styles submitted by any Jobber to a Contractor for manufacture in the Contractor's plant, and Contractor agrees that styles of one Jobber shall not be submitted to any other Jobber.

(6) The Association shall compute the amount due from the Contractor for unemployment insurance, old age pension, and the three-tenths of one per cent federal excise tax, vacation fund, and Labor Day fund and certify to the Contractor's Jobber the percentage to be deducted by the Jobber from the monies due the Contractor each week and the Jobber agrees to forward the same weekly to Mr. Sol C. Hamburger, 260 Tremont Street, Boston, Massachusetts, who has been designated by the Association as the agency to receive the said deductions and to distribute the same for the account of the Contractor for the above purposes.

(7) Individual contracts between Contractor and Jobber shall be subject to the terms of this agreement, and Jobber recognizes Association as the agent for Contractor to represent Contractor in the settlement of any dispute which may arise either under this agreement or under any individual agreement between Contractor and Jobber.

(8) All disputes and grievances arising under the terms of individual contracts between Contractor and Jobber, and all disputes and grievances arising under the terms of this contract, which cannot be adjusted between the representative of the Association and the representative of Jobber, shall be referred to arbitration, as hereinafter provided.

(9) If any dispute between the Association and a Jobber or between any individual Contractor and a Jobber
382 cannot be adjusted between the representative of the Association and the representative of the Jobber, the same shall be referred to Maxwell Copelof, of Orleans, Massachusetts, as arbitrator, who shall hear the parties as promptly as possible, and whose decision shall be final. If the said Copelof is unable for any reason to act, the parties agree that the arbitrator shall be named by the Conciliation Service of the United States Department of Labor. The expense of any arbitration shall be borne equally by the parties to the dispute.

(10) This agreement shall be construed as a separate agreement with each individual Jobber, and each individual

Jobber shall be responsible to the Association solely for his own acts and observance hereof. It shall continue in force for a period of one year from the date hereof and from year to year thereafter unless any party hereto notifies the opposite party in writing of its intention to terminate the same as to him or it not less than thirty days prior to the first day of October in any year beginning with 1945.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, either individually or by their duly authorized representatives, the day and year first above written.

WOMENS SPORTSWEAR MANUFACTURERS ASSOCIATION,
By H. B. KAUFMAN
Its President,

STANDARD SPORTSWEAR CO.—Milton H. Fine
BANNER SPORTSWEAR by Louis Cohen
DARTMOR SPORTSWEAR by S. I. Cohen
DEBBY LOU SPORTSWEAR INC.
by Louis Gordon
KENNISTON KLASSICS by Philip Sherman,
Treas.
383 MARK KAROFSKY
SUMMIT SPORTSWEAR CO.
COLLEGE-TOWN SPORTSWEAR INC.
Benjamin T. Kaplan, *Treas.*
ZAKONIT, INC., George Zakon, *Treas.*
CHURCHILL SPORTSWEAR, Hy Greenblatt
WINDSOR SPORTSWEAR, INC., S. Schwartz
SIMON & DOUGLAS by J. Simon
CENTURY SPTS. CO. INC., Oscar Cohen
LUCKY MAID SPORTSWEAR, Lou Swartz
SIMMONS SPORTSWEAR CO. INC.
by Louis Maltzman
COLEBACK SPORTSWEAR INC. by Louis Cohen
CAMPUS SHIRT MFG. CO. by Arthur L. Rubin
ELLEMY SPORTSWEAR CO., Harry Lipof
KAY MURNEY SPTS., Sidney Alkon
FRANKLIN SPORTSWEAR CO., George Berger
BARBELLE SPORTSWEAR by Jules Wollenberg
SPORT-MODES, Ernest Danaets

384 *Plaintiff's Exhibit 5*

Know all men by these presents:

This Agreement made and entered into this..... day of ....., 194... by and between the WOMENS SPORTSWEAR MANUFACTURERS ASSO-

CIATION, of the City of Boston, County of Suffolk, Commonwealth of Massachusetts, hereinafter referred to as the Association, for and in behalf of itself and all its members, present and future, hereinafter designated as the Contractor, and ..... of the City of ....., County of ....., Commonwealth of Massachusetts, hereinafter designated as the Jobber.

Whereas, the parties hereto are desirous of establishing harmony and promoting the welfare of the sportswear manufacturing industry; to establish a basis of equitable and fair business conduct and dealing; to minimize as far as possible all industrial disputes, conflicts and difficulties, and to remove present abuses and evils which constitute causes of dispute and differences between the Contractors and Jobbers, and provide for a speedy, inexpensive and efficient means of settlement and determination of such disputes.

Whereas, the Jobber desires to have the entire production of the Contractor, namely, ... of ...., Massachusetts operated by ....., it is therefore agreed that the said Jobber, namely, ... will provide the contractor with a sufficient amount of work to take care of all the employees in his shop, and the Contractor assigned hereby agrees to devote his entire production exclusively for the account of .... In case ..... will not be able to supply ..... with sufficient work, said Contractor shall have the privilege of taking work anywhere else too, during that period.

Now, therefore, in consideration of the foregoing recitals and the mutual promises and agreements of the parties hereinafter set forth and for other good and valuable consideration, it is agreed as follows:

1. The Association shall furnish to the Jobbers to the best of its ability such Contractors out of its membership that the Jobbers may equitably require.

2. The Jobber shall employ or continue to employ only such Contractor or Contractors who are members
385 of the Association, and the Jobber further agrees not to employ or in any way deal with such Contractor or Contractors who are not members of the Association.

A. Pursuant to Paragraph 2, the Jobber shall not employ any additional Contractors unless the Jobber first calls upon the Association to furnish such additional Contractors, whereupon the Association shall submit a list of Association Contractors available, but the Jobber shall not engage at any time any more Contractors than is necessary to equitable and fairly meet the Jobber's needs.

B. The Jobber in the distribution of orders for the manufacture of garments, shall divide same as equally and equitable as possible among the Contractors engaged by him, and that of his own present existing shop, if such shop is in existence at the time of signing of this Agreement.

All bills submitted by the Contractor or Contractors shall be net, and the granting of secret rebates shall be in violation of this Agreement. In the event of the discovery of the granting of any secret rebates, the Jobber shall pay to the Association such an amount or amounts that may be established as having been rebated.

3. All orders given by the Jobber to the Contractor or Contractors shall be in writing with the price to be billed by the Contractor to the Jobber clearly set out on same.

4. It shall be considered a violation for any Contractor to submit styles to any other Jobber that were originally given to the Contractor for manufacture by the Jobber.

5. The Contractor shall have, and there is hereby created by this Agreement for his benefit, a lien on all goods, merchandise and materials shipped, sent or delivered to him by the Jobber, whether or not the said goods, merchandise, or materials be manufactured into garments or otherwise, to the extent and amount of all moneys due and owing from the Jobber to the Contractor, by reason of the manufacture and delivery of any garments by the Contractor to the Jobber on any and all previous orders upon which payment has not been made.

6. WHEREAS, the Legislature of the Commonwealth of Massachusetts has, with the approval of the Governor of said Commonwealth, enacted a law termed the Massachusetts Unemployment Compensation Law, and

386 WHEREAS, it is the intention of both parties to the within Agreement that the ultimate burden of paying the assessment shall be upon the Jobbers and not the Contractors, and that the ultimate burden of supplying to the Commonwealth of Massachusetts and to the Federal Government, the information required by law to be furnished by the employer shall be upon the Contractor and not upon the Jobber.

NOW, THEREFORE, in order to pay said assessments to the Commonwealth of Massachusetts and the Federal Government, the Jobber agrees to pay the amount necessary to meet said assessments. It is understood and agreed that the above amount is to be separate and distinct from the price agreed to be paid for the manufacture of garment or garments by the Contractor. Said sum or sums to be computed each and every week based upon the weekly payroll.

WHEREAS, the said Contractor is under contractual obligations with the Union, to pay his workers for Labor Day Holiday an additional days pay: It is therefore, agreed by said Jobber that he will reimburse said Contractor the amount of money said Contractor will pay his workers for the said Labor Day Holiday pay.

Any violation of any of the provisions of this Agreement by either party shall not operate as a termination of this Contract, nor shall any violation be deemed to run to the essence of this Contract.

This Agreement shall be effective from the date hereof and to ..... day of ..... 194 and thereafter from year to year, unless previously terminated by either party upon written notice of not less than ten (10) days prior to its expiration.

IN WITNESS WHEREOF the parties have hereunto and to another instrument of like tenor set their hands and seals this ..... day of ..... and year of 194..

.....
Jobber.

.....
WOMENS SPORTSWEAR MANUFACTURERS ASSOCIATION,
By:.....
.....
Contractor.

387 *Plaintiff's Exhibit 6*

WOMEN'S SPORTSWEAR MANUFACTURERS ASSOCIATION
260 Tremont Street
Boston 11, Mass.

BERNARD D. ROSENBERG
Executive Director

March 1, 1944

Colback Sportswear
68 Essex St.
Boston, Mass.

Attention: Mr. Louis Cohen

Dear Mr. Cohen:

I have been authorized by the contractors now operating their shops for you, and through them, I am directed by the above association to notify you as follows. In order for the contractors to operate their shops for your account in the future, it will be necessary to establish equitable and fair

business dealings and remove abuses and evils which cause conflict and dispute between jobber and contractor.

I shall hold myself ready and will be available at my office at any time at your convenience to confer with you on the above stated matters.

I shall anticipate hearing from you within a reasonable time.

Very truly yours,

WOMEN'S SPORTSWEAR MANUFACTURERS ASSOCIATION,
BERNARD D. ROSENBERG,
Executive Director.

DBR:BB

388 *Plaintiff's Exhibit 7*

WOMEN'S SPORTSWEAR MANUFACTURERS ASSOCIATION
260 Tremont Street
Boston 11, Mass.

BERNARD D. ROSENBERG
Executive Director

March 3, 1944

Capitol Skirt Co.
15 Kneeland Street
Boston, Mass.

Attention: Mr. I. Rubin

Dear Sir:

Enclosed please find copy of agreement in accordance with your request.

In order for your contractors to continue to operate for your account hereafter, I shall appreciate hearing from you on or before Wednesday, March 8th, 1944.

Very truly yours,

WOMEN'S SPORSWEAR MFG. ASSOCIATION,
BERNARD D. ROSENBERG,
Executive Director.

389. *Plaintiff's Exhibit 8.*

Ledger of Women's Sportswear Manufacturers Association marked Government's Exhibit 8 is here omitted, as it was marked only for identification, and not used as an Exhibit.

390 *Plaintiff's Exhibit 9*

Tuesday Oct. 31, 1944

Regular Meeting of The Women's Sportswear Manufacturers Association.

Meeting opened at 7 P. M. by President Harry Kauffman. Minutes of previous meeting were read and accepted as read. The secretary read the names of the firms who signed the contract. 20 signatures appeared on the contract. There are still 2 more who have not signed, because of being absent from the city.

Mr. Rosenberg explained for the benefit of Mr. Herscowitz Point 1, of the agreement.

A new member, The Melody Sportswear Co. of 630 Washington St., Boston, applied to be admitted. A check of $50.00 for initiation fee, accompanied the application. Mr. Karger made a motion to accept application. Motion was seconded. Carried.

Mr. Morris Isenberg, suggested that it would be advisable to admit members into the association who have been already established in the business for years and not new comers in the trade.

Mr. Rosenberg, suggested that we have a membership committee and that all applications be sent to the membership committee for approval before action is taken at the meeting.

A motion was made and seconded to have a membership committee, motion carried. Nomination and election of officers for the ensuing year takes place.

The following were duly nominated and elected:

President—Max Herscowitz
Vice President—Morris Isenberg
Treasurer—Sy Mover
Secretary—William R. Federico

The newly elected President, Max Herscowitz, takes the chair to preside over the meeting and appoints the following committees:

Executive Committee:
Morris Isenberg—Chairman
Barney Fisher
Joseph Keshen
Nathan Karger
B. Byer
Max Herscowitz
William R. Federico
Hy Kagan
Sy Mover

Committee on Finance and Budget, and Trustees of the Funds of The Assoc.

Hy Kagan—Chairman
Sy Mover
William R. Federico

391. Membership Committee:
Barney Fisher—Chairman
Morris Isenberg
H. Kaufman
Sy Mover,

Committee on By-Laws and Incorporation:
B. Rosenberg
S. Mover
H. Kagan

A motion made and seconded to have a instalation and dinner meeting. Motion carried.

The following committee was appointed to make arrangements for the instalation and dinner meeting:
Mr. Barney Fisher—Chairman
H. Kaufman
Nathan Karger.

Upon motion, meeting adjourned in good order at 8:30 P. M.

Respectfully submitted,

/s/ William R. Federico.

392 *Plaintiff's Exhibit 10*

Tuesday November 14, 1944

Regular Meeting of The Women's Sportswear Manufacturers Association.

Meeting opened at 6:30 P. M. by president, Mr. Max Herscowitz. Minutes of previous meeting of Oct. 31, 1944 were read and accepted as read.

Motion was made by Mr. Hy Hagan to accept, bill from Harry Bergson, for services rendered in connection of drafting agreement for the association. Motion seconded and carried.

Motion was made to accept application of membership from Modern Sportswear Co., 515 Washington St., Boston, Mr. Silver, prop. Motion seconded and carried. Application referred to Membership Committee for investigation and approval.

Instalation and Dinner Committee reported: Arrangements have been made to have the dinner at Stubens at $2.00 per plate on Nov. 28th at 6 P. M.

Mr. Mover makes a motion that the treasurer pay for the dinner. Motion seconded and carried. The committee will take care of reservations for the dinner.

Finance Committee reports: Chairman Kagan said, that a full report is not as yet available regarding the set up of machinery for collecting of percentage of money. Mr. Hamburger, suggested that we charge 8% of the gross payroll, which includes, Vacation Fund, Soc. Security, Federal Tax, Labor Day, administrative cost and also dues to the association.

Mr. Mover reported, that Mr. Hambruger made an error on 8% on the gross, but to make it 8½% on the net payroll and the administrative cost will be 1.3%. This 1.3% includes also dues to the association. The administrative office will not get 1.3%. The committee will get together and allocate the necessary amounts for the various departments, but the entire amounts is based on an estimate and the experienced table in the future will establish the exact amount. Motion was made by Mr. Fisher, and seconded by Mr. Kaufman, to accept the report of the Finance Com.

A motion was made to have the committee instruct Mr. Hamburger, to start working: Mr. Fisher, seconded the motion. Motion was carried.

Mr. Mover rendered a treasurer report, which upon motion made and seconded. Was accepted as read.

The question of old members wishing to be reinstated. Upon motion they are to be referred to the membership committee for action.

Mr. Harry Kaufman, prefers charges against Nathan Karger for firing an operator who worked for Mr. Kaufman. The president, appointed a committee, consisting of Mr. Kagan and Mr. J. Keshen to iron out the differences.

It is suggested by the President that a committee on designation of contractors to the jobbers. He appointed the following members on the committee:

Morris Isenberg—Chairman, Nathan Schwartz, B. Fisher, Max Herscowitz.

Upon a motion to adjourn, meeting was closed in good order at 8:55 P. M.

Respectfully submitted,

/s/ WILLIAM R. FEDERICO
Secretary.

393 *Plaintiff's Exhibit 11*

Tuesday Dec. 26, 1944:

Regular meeting of The Women's Sportswear Mfgr. Ass'n called to order by its President, Max Herscowitz at 7:30 P. M.

Minutes of the previous meeting read, there being no omissions or corrections the minutes were accepted as read.

The question is again being raised about the deductions the jobbers are making from the contractors. The president, explains how it came about, where the agreement had to be signed on the above basis.

Mr. Rosenberg, reports that he has an appointment with Mario on Wednesday Dec. 27th, 1944 for the purpose of him joining the Association. It is the consensus of opinion that the Union take steps on the following shops: Fields, Fishel and J. Rosenberg, for them to join the Association.

The president, reports that Fishman joined the Association.

The Finance Committee reports that Mr. Hamburger will return the money now collected from the jobbers to each contractor. Beginning Jan. 1st, 1945 the terms of the agreement whereby deductions to be made by the jobbers will apply.

Upon motion to adjourn the meeting closed in good order at 8:45 P. M.

Respectfully submitted,

/s/ Bernard D. Rosenberg
Sec'y Protem.

394 *Plaintiff's Exhibit 12*

Wednesday May 16, 1945.

Regular meeting of the Women's Sportswear Manufacturers Ass'n was called to order by its president, Morris Isenberg at 7 P. M.

Minutes of the meeting held on Wednesday May 2, 1945 was read and accepted as read.

The manager reports that the situation in the industry is not very bright.

The Finance Committee reports that the finances in the Association are in good condition and that there is approximately about $500.00 balance in the bank, outside of May dues which is due from the members.

It is requested to investigate Ernest Donath Sportswear about giving out work to non-members of the Association.

The question of Harry Kaufman's shop being on strike on account of him failing to pay the vacation fund. It is concensus of opinion that the Association cannot take any action on the matter.

Upon motion to adjourn, meeting closed in good order at 8:30 P. M.

Respectfully submitted,
BERNARD D. ROSENBERG, *Acting Sec'y.*

395 In United States District Court
Petition for Appeal
Filed February 9, 1948.

The United States of America, plaintiff in the above-entitled cause, considering itself aggrieved by the final judgment of this Court entered on the tenth day of December, 1947, does hereby pray an appeal from said final judgment to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the judgment erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

Plaintiff prays that this appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents upon which said final judgment was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

CHARLES H. WESTON
Special Assistant to the Attorney General.

Dated this 9th day of February, 1948.

396 In United States District Court
Order Allowing Appeal
February 9, 1948.

In the above-entitled cause the United States of America, plaintiff, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final judgment of this Court in this cause entered on the tenth day of December 1947, and having also made and filed its petition for appeal, assignment of errors and prayer for reversal, and statement of jurisdiction, and hav-

ing in all respects conformed to the statutes and rules in such cases made and provided,

IT IS THEREFORE ORDERED AND ADJUDGED

That the appeal be and the same is hereby allowed as prayed for.

ARTHUR D. HEALEY
United States District Judge.

Dated this 9th day of February, 1948.

397 In United States District Court

Citation

February 9, 1948

TO: Women's Sportswear Manufacturers Association
Hyman Cagan and Nathan Swartz, d. b. a. Hynat Sportswear Co.
Benjamin Byer and Samuel Miller, d. b. a. Miller and Byer
William R. Frederico and James Frederico, d. b. a. V & B Sportswear Co.
Isaac Shapiro and Henry Webber, d. b. a. S & W Sportswear

Kay's Sportswear, Inc.	Harry Kaufman
S. Mover & Son, Inc.	Rocco Cerasulo
Nathan Karger	Israel Rosenfield
Samuel Mover	Joseph Keshen
Morris Isenberg	Hyman Medoff
Bernard D. Rosenberg	Harry Fishman
Max Herscowitz	Mary Laporto
Morris Greenberg	Hyman Sherman
Barney M. Fisher	Bella Kirtchmar

You are hereby cited and admonished to be and appear in the Supreme Court of the United States in Washington, D. C., within forty (40) days from the date hereof, pursuant to an order allowing an appeal from the final decree made and entered in the above-entitled cause on February 9, 1948, in an action wherein the United States of America is appellant and you are appellees, to show cause why the decree rendered against the said appellant should not be corrected.

WITNESS, the Honorable Arthur D. Healey, Judge of the District Court of the United States for the District of Massachusetts.

ARTHUR D. HEALEY,
United States District Judge.

This ninth day of February, 1948.

In United States District Court

398 *Assignment of Errors and Prayer for Reversal*

Filed February 9, 1948

The United States of America, plaintiff in the above-entitled cause, in connection with its petition for appeal to the Supreme Court of the United States, hereby assigns error to the record and proceedings and the entry of the final decree in the district court on December 10, 1947, in the above-entitled cause, and says that in the entry of the final decree the district court committed error to the prejudice of the plaintiff in the following particulars:

1. The court erred in concluding that none of the defendants committed any violation of the Sherman Act, and in denying the plaintiff's prayer for relief.

2. The court erred in determining that the restraints upon commerce resulting from defendants' combination were not restraints upon interstate commerce prohibited by Section 1 of the Sherman Act.

3. The court erred in holding that the restraints upon interstate commerce resulting from defendants' combination were indirect and remote.

4. The court erred in failing to recognize that Congress intended by the Sherman Act to prohibit all traditional types of restraints on commercial transactions to the limits of its constitutional power.

5. The court erred in holding that decisions under the National Labor Relations Act such as *United States v. Fainblatt*, 306 U. S. 601, were inapplicable precedents in determining what constitutes interstate commerce under the Sherman Act.

6. The court erred in failing to hold that the necessary and intended effect of defendants' combination constituted a substantial restraint on a substantial volume of interstate commerce.

399 7. The court erred in finding that none of the defendants attempted to fix wholesale or retail prices of women's sportswear or to boycott any concern or interfere with the manufacture or sale of its goods outside of Massachusetts.

8. The court erred in failing to grant the finding of fact requested by the plaintiff.

Wherefore, plaintiff prays that the final decree of the district court may be reversed to the extent that it is inconsistent with the errors herein assigned by the plaintiff, and for such other and fit relief as the court may deem just and proper.

Charles H. Weston,
Special Assistant to the Attorney General.

Dated this ninth day of February, 1948.

In the United States District Court

421 *Praecipe for Transcript of Record*

Filed February 19, 1948

To: The Clerk, United States District Court, District of Massachusetts:

The appellant hereby directs that, in preparing the transcript of the record in the above-entitled cause for its appeal to the Supreme Court of the United States, you include the following:

1. All docket entries showing filing of the pleadings and papers hereinafter set forth, and the entry of the orders hereinafter specified.
2. The complaint.
3. The motions of the defendants to dismiss the complaint.
4. Memorandum decision of Honorable George C. Sweeney, District Court Judge, filed September 10, 1946, denying defendants' motions to dismiss the complaint.
5. The answers of the defendants to the complaint, including the amendment to his answer requested by Harry Fishman by motion filed August 2, 1946 and assented to by the plaintiff.
6. Complete transcript of the proceedings at the trial, certified by the official court reporter, together with such certificate.

422 7. All exhibits.

8. Findings of fact and conclusions of law requested by plaintiff, filed February 28, 1947, including from the finding of fact only the paragraphs consecutively numbered from 1 to 15, inclusive, and excluding from the conclusions of law all citations of cases; references to plaintiff's trial brief; quotations from court decisions; and material contained in the paragraphs entirely indented.
9. Findings of fact, conclusions of law, and opinion of Honorable Arthur D. Healey, District Court Judge, filed December 10, 1947.
10. Order for entry of judgment for defendants.
11. Petition for appeal.
12. Assignment of errors and prayer for reversal.
13. Statement of jurisdiction.
14. Order allowing appeal.
15. Citation.
16. Statement calling attention to the provisions of Supreme Court Rule 12(3).
17. Praecipe for transcript of record.

18. Proof of service of:
    a. Petition for appeal;
    b. Order allowing appeal;
    c. Assignment of errors and prayer for reversal;
    d. Statement of jurisdiction;
    e. Citation;
    f. Statement calling attention to the provisions of Supreme Court Rule 12(3);
    g. Praecipe for transcript of record.

/s/ GRANT W. KELLEHER,
Special Assistant to the Attorney General.

423 Service of a copy of the attached Praecipe for Transcript of Record is hereby acknowledged.

February 17, 1948
/s/ HARRY BERGSON, JR.

Attorney for:
Women's Sportswear Manufacturers Association
Bernard D. Rosenberg
Morris Isenberg
Kay's Sportwear, Inc.
Nathan Karger
S. Mover & Son Inc.
Samuel Mover
Hyman Cagan
Nathan Swartz
Morris Greenberg
Barney M. Fisher
Harry Kaufman
Rocco Cerasulo
Benjamin Byer
Samuel Miller
William R. Frederico
James Frederico
Israel Rosenfield
Joseph Keshen
Hyman Sherman
Bella Kritchmar

February 17, 1948
/s/ ABRAHAM WASSERMAN
Attorney for Hyman Sherman

Feb. 17, 1948
/s/ ARTHUR T. WASSERMAN
Attorney for Mary LaPorto

Feb. 18, 1948
/s/ ISAAC SHAPIRO

Feb 18, 1948
/s/ MAX HERSCOWITZ

Feb. 18, 1948
/s/ HENRY WEBBER

Feb. 18, 1948
/s/ H. FISHMAN

424 *Affidavit of Service*

Commonwealth of Massachusetts, } Boston—
County of Suffolk. } ss.: February 19, 1948

JOHN S. TUCKER, being duly sworn, deposes and says that he is employed in the office of the Antitrust Division, Department of Justice, Rm. 805—82 Devonshire Street, Boston (9) Massachusetts.

That on the 18th day of February, 1948, he served a copy of the within Praecipe For Transcript of Record on Hyman Medoff, a defendant herein, by personally delivering a copy to said Hyman Medoff at his place of business on the 5th Floor at 49 Bennett Street, Boston, Massachusetts.

/s/ JOHN S. TUCKER.

Subscribed and sworn to before me this
19th day of February, 1948.
/s/ C. WORTH ROWLEY, JR.,
Notary Public.
My Commission Expires August 28, 1953.

425 In United States District Court

Designation of Additional Portions of the Record Desired to be Included

Filed February 24, 1948

To: The Clerk, United States District Court, District of Massachusetts.

The appellee, Women's Sportswear Manufacturers Association, hereby directs that, in preparing the transcript of the record in the above-entitled cause for appeal to the Supreme Court of the United States, you include the following:

1. Defendants' proposed findings of fact and rulings of law, filed February 28, 1947, excluding therefrom all citations of cases.

2. Proof of service of designation of additional portions of the record desired to be included.

HARRY BERGSON, JR.,
Attorney for
Women's Sportswear Manufacturers Association.

Service of a copy of the attached Designation of Additional Portions of the Record Desired to be Included is hereby acknowledged.

ROY M. FREED,
Special Assistant to the Attorney General,
Attorney for the United States of America.

426 In United States District Court

No. 4029 *Docket Entries*

Date	
1945	
Jul. 23	Complaint filed.
23	Summons issued.
Aug. 10	Summons returned by U. S. Marshal with service on Jacob Wienberg, Isaac Shapiro, Henry Webber, Max Herscowitz, Hyman Medoff, Harry Fishman, Mary LaPorto, Hyman Cagan, Nathan Swartz, Kay's Sportswear, Inc., Nathan Karger, Pres., Morris Greensberg, Barney M. Fisher, Harry Kaufman, Samuel Mover & Son, Inc., Samuel Mover, Rocco Cerasulo, Benjamin Byer, Samuel Miller, William R. Frederico, James Frederico, Israel J. Rosenfield, Joseph Keshen, Hyman Sherman, Bella Kritchmar, Morris Isenberg, Berhard D. Rosenberg.
Aug. 10	Answer and disclaimer of Deft. Jacob Weinberg, filed.
Aug. 17	Motion to dismiss & Answer of deft. Harry Fishman filed.
" 17	Appearance of I. Edward Newman for deft. Harry Fishman filed.
" 17	Motion for particulars filed by defts. Bernard D. Rosenberg, Morris Isenberg, Kay's Sportswear, Inc., Nathan Karger, S. Mover & Son, Inc., Samuel Mover, Hyman Cagan, Nathan Swartz, Morris Greenberg, Barney M. Fisher, Harry Kaufman, Rocco Cerasulo, Benjamin Byer, Samuel Miller, William R. Frederico, James Frederico, Israel Rosenfield, Joseph Keshen, Hyman Sherman and Bella Kritchmar.
Aug. 17	Motion to Dismiss filed by Bernard D. Rosenberg, Morris Isenberg, Kay's Sportswear, Inc., Nathan Karger, S. Mover & Son, Inc., Samuel Mover, Hyman Cagan, Nathan Swartz, Morris Greenberg, Barney M. Fisher, Harry Kaufman, Rocco Cerasulo, Benjamin Byer, Samuel Miller, William R. Frederico, James Frederico, Israel Rosenfield, Joseph Keshen, Hyman Sherman and Bella Kritchmar.
Aug. 20	Answer of Hyman Sherman filed.
21	Answer of Hyman Medoff filed late by consent.
27	Answer of Deft. Max Herscowitz filed late by consent.
27	Motion of deft. Max Herscowitz to dismiss filed late by consent.

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Date 1946	
Aug. 2	Motion of Deft. Harry Fishman to amend answer filed, assented to.
2	Motion of Deft. Harry Fishman for preliminary hearing filed.
12	Appearance of Grant W. Kelleher, Spec. Asst. to Atty. Gen. for U. S. filed.
12	Appearance of W. D. Kilgore, Jr., Spec. Atty. for U. S. filed.
12	Appearance of Paul T. O'Donoghue, Spec. Atty. for U. S. filed.
12	Appearance of James M. Malloy, Spec. Atty. for U. S. filed.
Sep. 10	SWEENEY, J. Heard on Deft's, Max Herscowitz, motion to dismiss, on deft's, Bernard D. Rosenberg, *et al.*, motions to dismiss, and on motion of deft., Harry Fishman, to dismiss for lack of jurisdiction; taken under advisement.
Sep. 10	SWEENEY, J. Heard on deft. Rosenberg's motion for particulars; taken under advisement.
10	SWEENEY, J. Memorandum: Ordered, motions to dismiss are denied. Memo filed. Copies mailed to all parties.
10	SWEENEY, J. Memorandum: Defendants' motions for bills of particulars are denied. Memo. filed. Copies mailed to all parties.
12	Suggestion of death of deft. Jacob Weinberg filed.
23	Answer of the deft. Women's Sportswear Manufacturers Assoc. filed.
23	Answer of the defts. Bernard D. Rosenberg, Morris Isenberg, Kay's Sportswear, Inc., Nathan Karger, S. Mover & Son, Inc., Samuel Mover, Hyman Cagan, Nathan Swartz, Morris Greenberg, Barney M. Fisher, Harry Kaufman, Rocco Cerasulo, Benjamin Byer, Samuel Miller, William R. Frederico, James Frederico, Israel Rosenfield, Joseph Keshen, Hyman Sherman, and Bella Kritchmar, filed.
Dec. 12	WYZANSKI, J. Case called for pre-trial; ORDERED, action dismissed as against the defendant Jacob Weinberg. Order filed and pre-trial proceedings filed.

Date	
1947	
Jan. 9	Plaintiff's request for admission under Rule 36 filed.
Feb. 4	Withdrawal of appearance of I. Edward Newman for deft. Harry Fishman, filed.
7	Withdrawal of appearance of Louis G. Stone for deft. Max Herscowitz filed.
428	
1947	
Feb. 10	Depositions of Bernard Rosenberg and Harry Fishman received.
13	HEALEY, J. Trial without jury begins; evidence; adjourned to Feb. 14.
14	Defendants' motion for judgment filed.
14	HEALEY, J. Trial without jury continues; evidence; deft's motion for judgment denied; adjourned to February 28, 1947, for arguments.
Feb. 28	HEALEY, J. Arguments; requests for findings of fact and conclusions of law filed by both parties, supplemental brief filed by deft; reply briefs to be filed; taken under advisement.
Dec. 10	HEALEY, J. OPINION: The plaintiff's prayers for an injunction and other relief should be denied. The clerk will prepare an order for judgment for the defendants. Opinion filed. Counsel notified.
10	HEALEY, J. Judgment in accordance with the opinion of the court for the defendants without costs. Judgment filed. Copies mailed to counsel Dec. 10, 1947.
1948	
Feb. 9	Petition for appeal to U. S. Supreme Court filed by United States 5.00
9	HEALEY, J. Order allowing appeal.
9	Citation issued—returnable forty days from this date.
9	Assignment of errors and prayer for reversal filed by U. S.
9	Statement calling attention to the provisions of Supreme Court Rule 12 (3) filed by United States.
9	Statement as to jurisdiction filed by United States.
13	Proof of service of petition for appeal, order allowing appeal, assignment of errors and prayer for reversal, statement of jurisdiction with opinion attached, and citation, together with statement directing attention to provisions of paragraph 3

of Rule 12 of the Rules of the Supreme Court of the U. S. filed.

19 Praecipe for transcript of record filed by United States.

Feb. 24 Designation of additional portions of the record filed by defendant.

429 Clerk's Certificate to foregoing transcript omitted in printing.

430 In the Supreme Court of The United States

Statement of Points to be Relied Upon and Designation of Parts of the Record Necessary for Consideration Thereof—Filed March 31, 1948.

1. Now comes the Appellant in the above cause and for its statement of points upon which it intends to rely in its appeal in this Court adopts the points contained in its Assignment of Errors heretofore filed herein.

2. The entire record in this cause as filed in this Court pursuant to the appellant's praecipe to the Clerk of the United States District Court for the District of Massachusetts is necessary for the consideration of the foregoing points and appellant designates said entire record for printing by the Clerk of this Court.

PHILIP B. PERLMAN
Solicitor General.

Dated: March 24, 1948.

431 *Certificate.*

I hereby certify that a true copy of the attached Statement of Points to be Relied upon and Designation of Parts of the Record Necessary for Consideration Thereof was duly served on all appellees on this 29th day of March, 1948, by depositing, in the United States mails copies thereof addressed either to counsel for appellees or, with respect to such of the appellees as are not represented by counsel, to such appellees personally.

GRANT W. KELLEHER
Special Assistant to the Attorney General.

432 Supreme Court of the United States

Order Noting Probable Jurisdiction—April 19, 1948

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

★ U. S. GOVERNMENT PRINTING OFFICE: 709332 ——— NO. 1 ——— 1948

STATEMENT AS TO JURISDICTION

(Filed February 9, 1948)

In compliance with Rule 12, as amended, of the Supreme Court of the United States, the United States of America submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the District Court entered in this case on December 10, 1947. A petition for appeal is presented to the District Court herewith, to wit, on February 9, 1948.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat. 823; 36 Stat. 1167; 58 Stat. 272; 15 U. S. C. 29), and Section 238 of the Judicial Code, as amended (36 Stat. 1157; 38 Stat. 804; 43 Stat. 938; 28 U. S. C. 345).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *United States* v. *Yellow Cab Co.*, 332 U. S. 218; *International Salt Co.* v. *United States*, 332 U. S, 392.

STATUTE INVOLVED

The Sherman Act of July 2, 1890, 26 Stat. 209, as amended (15 U. S. C., secs. 1 and 4) provides in part as follows:

"SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. * * * Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor. * * *.

SEC. 4. The several district courts in the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

THE ISSUES AND THE RULING BELOW

This is an equity suit brought by the United States in the Federal District Court for the District of Massachusetts against Women's Sportswear Manufacturers Association, an unincorporated association doing business in Boston, Massachusetts, its officers and members, charging defendants with engaging in a combination and conspiracy to restrain interstate commerce in violation of Section 1 of the Sherman Act, and praying that the court dissolve the defendant Association and cancel an allegedly illegal agreement entered into by it. Following trial of the cause, the District Court concluded that defendants had not violated the Sherman Act, rendering an opinion to that effect which embodied its findings of fact. Those findings may be summarized as follows:

Boston is the fifth largest producing center of women's sportswear (jackets, skirts, blouses, and other garments made from wool, rayon, and cotton fabrics). The business is engaged in by jobbers who maintain sales offices in other cities and employ salesmen who travel throughout the United States seeking orders. On receipt of an order, the jobber, who customarily maintains neither stocks of fabrics nor of finished garments but manufactures sportswear only upon a specific order, purchases the necessary fabrics of which 80% comes from mills located outside of Massachusetts. The jobber cuts the fabric according to his patterns and the customer's order, and then usually employs, to do the stitching and put on the necessary ornaments, an independent contractor in the Boston area who has a shop or factory in which sewing machines have been installed. The contractor returns the garments, upon completion of the stitching, to the jobber who immediately ships them to the customers of whom at least 80% is located outside of Massachusetts.

The defendant Association, organized sometime before December 1943, is an organization of contractors in the Boston area who handle at least 65% of all sportswear produced in the area. In early 1944 the Association proposed to certain jobbers the execution of an agreement, the principal provision of which would have required the jobbers to have dealt exclusively with Association members for stitchwork. The refusal of jobbers to execute the proposed agreement as an illegal one resulted in some defendants' stopping work then being performed for certain jobbers. Nego-

tiations ensued and resulted in October 1944 in 21 jobbers' signing a revised form of agreement which is still in effect. These 21 jobbers manufacture over 65% of all women's sportswear produced in the Boston area, their production having an annual gross value of about $8,800,000.

The signed agreement requires, *inter alia*, that the jobber give all his work to Association members, provided such members are comparable as to price and quality of work with non-member contractors; that the jobber distribute his work equitably among Association members engaged by him; that the jobber furnish the contractor with a written order setting forth the price and not accept a secret rebate from the contractor; and that all individual agreements between jobber and contractor be made subject to the provisions of the master agreement.

One of the purposes of the Association was to maintain the standard of prices charged jobbers by contractors for stitching sportswear in the Boston area. The prices charged by contractors for stitching sportswear amount to approximately 25% of the sales price of the finished garment and are unquestionably reflected in that price. Any work stoppage by contractors of the jobber slows down the stream of sportswear entering into interstate commerce. Such a work stoppage also slows down the taking of orders by jobbers in interstate commerce, and the purchase by jobbers of fabrics from out-of-state mills.

The district court nevertheless concluded that defendants' activities were purely local, affecting directly only the manufacture of sportswear in Massachusetts, and having only an indirect and

remote effect on interstate commerce. It held that not every combination which might in some degree interfere with interstate commerce was in violation of the Sherman Act but only such a combination as either intentionally restrained interstate commerce or had a sufficiently direct and immediate effect on such commerce as to enable a court to infer an intent to restrain interstate commerce. It considered that neither condition was here met.

THE QUESTIONS ARE SUBSTANTIAL

The holding of the district court is in direct conflict with the recognized principle that Congress intended in the Sherman Act to ban every commercial restraint of trade which could constitutionally be reached under the commerce clause. *United States* v. *South-Eastern Underwriters Association*, 322 U. S. 533, 553. It has always been true that combinations of competitors, even though entered into by those engaged only in intrastate commerce, may nevertheless constitute a violation of the Sherman Act if the necessary effect of the combination constitutes a restraint of interstate commerce. *United States* v. *Patten*, 226 U. S. 525. That the objective of the combination is the elimination of intrastate competition is not material if the means adopted for its accomplishment reach beyond the boundaries of one State and tend to eliminate interstate commerce. *United States* v. *Frankfort Distilleries*, 324 U. S. 293, 298.

We submit that Congress has undoubted constitutional power, and intended in the Sherman Act, to protect interstate commerce against un-

duly high prices or other restraints or clogs resulting from restrictions on intrastate competition. Restriction on intrastate competition in a business activity inextricably interlocked with the stream of interstate commerce may completely choke that stream of commerce. It cannot be supposed that the United States must wait to remove the block on interstate commerce thus created until such time as it is clear that the stream of interstate commerce is completely choked. If the certain tendency of the intrastate restriction is to raise the prices of a number of competitors for a substantial volume of interstate commerce and thus commence a process which, in the absence of other factors, may ultimately lead to their elimination as interstate competitors, the intrastate restriction violates the Sherman Act.

The district court here explicitly found that the defendant Association had as one of its purposes the maintenance of prices which contractors charged jobbers and that such prices were clearly reflected in a large volume of sales made in interstate competition. The district court might equally well have found that the defendants intended, not only to suppress competition completely among those performing an essential function in the jobbers' business, but to delimit the contractors with whom the jobbers were permitted to deal. That defendants' trade-restraining activities will importantly affect the prices at which jobbers may compete for interstate business is sufficient to establish a restraint of interstate commerce within the reach of the Sherman Act. The substantiality of the effect on

jobbers' prices is apparent from the further finding that the prices charged to jobbers by defendants, and with which the defendants are tampering, amount to 25% of the ultimate wholesale price of the goods in question. Once it is established that the inevitable tendency of defendants' activities is to injure Massachusetts jobbers as interstate competitors, it cannot be successfully urged that the effects of defendants' activities must have ripened into actual elimination of the jobbers.

The district court's reliance upon *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, involves a misreading of what the Court there held. The decision that the activities there involved were not a restraint of interstate commerce was reached on the ground that the alleged unlawful activities did not constitute a restraint of the character at which the Sherman Act was aimed, not upon the ground that the restraint was not one upon interstate commerce.

The district court's refusal to consider such cases arising under the National Labor Relations Act as *Labor Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, and *Labor Board* v. *Fainblatt*, 306 U. S. 1, as applicable precedents to this proceeding under the Sherman Act rested on a clear misconception of the sweep of the Sherman Act. In those cases the Court determined that intrastate activities, far less extensive in scope than those of defendants here, so burdened interstate commerce as to be within the reach of congressional power over interstate commerce. Since the impact on interstate commerce in this case is one accomplished by a traditional

type of commercial trade restriction, all of which Congress intended to reach in the Sherman Act to the extent of its constitutional power, it is clear that the Court's decisions in the cases above are applicable precedents which establish that defendants' restraints are restraints upon interstate commerce.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

FEBRUARY 9, 1948.

In the District Court of the United States
District of Massachusetts

Civil Action—No. 4029

UNITED STATES

v.

WOMEN'S SPORTSWEAR MANUFACTURERS ASSOCIATION, ET AL.

OPINION

December 10, 1947

HEALEY, J.: This complaint was filed under Section 4 of the Sherman Anti-Trust Act (15 USC 4), against the defendants to prevent further alleged violations by them, jointly or severally, of Section 1 of the Act (15 USC 1).

The defendant, Women's Sportswear Manufacturers Association, hereinafter referred to as the "Association," is described as a voluntary unincorporated association composed of contractors in the Boston area who are engaged in the business of stitching women's sportswear apparel. The other defendants are firms, partnerships, corporations, associations or individuals, engaged as contractors in the business of stitching women's sportswear apparel, that are alleged to be members of the defendant Association, or officers or agents of the defendant Association.

It is alleged in the complaint that "acts done by defendant Association or defendant corporations were authorized, ordered and done by the officers, directors, agents and employees of such Association and corporations, including natural persons herein named as defendants."

After setting forth the nature of the trade and commerce involved, the complaint charges that the defendants have violated the Sherman Act as follows:

> 24. Beginning in the month of March 1944, and continuing thereafter up to and including the date of filing this complaint, the defendants have been and now are engaged in an unlawful combination and conspiracy to force all jobbers of women's sportswear located in the Boston Area to contract exclusively with the Women's Sportswear Manufacturers Association and its members for their stitching requirements on women's sportswear garments manufactured by such jobbers, which contracts unreasonably restrain the hereinbefore described interstate trade and commerce, in violation of Section 1 of the Act of Congress of July 2, 1890, 26 Stat. 209, as amended, commonly known as the Sherman Act. Defendants threaten to continue such offenses and will continue them unless the relief hereinafter prayed for in this complaint is granted.

The alleged terms of the conspiracy and combination are set forth in paragraph 25 of the complaint, and the alleged effects thereof are set forth in paragraph 26.

The complaint concludes with prayers for injunctions as follows:

1. That upon final hearing of this cause, the court order, adjudge and decree that the contracts, combination and conspiracy hereinabove described, constitute violations of Section 1 of the Sherman Act;

2. That the defendant, Women's Sportswear Manufacturers Association, and each of its defendant contractor members, be required to cancel the several agreements now in effect with the several jobbers under which the latter are required to designate the Association and its members as exclusive stitchers for women's sportswear manufactured by such jobbers, as well as to distribute their available business equally among such stitchers on terms imposed by such stitchers, and that the Association and each of its contractor members, their successors, transferees or assignees, be perpetually enjoined from making any new exclusive agreements, similar in nature with any jobbers of women's sportswear in the Boston area;

3. That the Women's Sportswear Manufacturers Association be dissolved and that no new or other association be formed having the same purposes or objects;

4. That the contractor defendants and the members of the Women's Sportswear Manufacturers Association, and each of them, their committees, officers, directors, agents, employees, representatives, and all persons, associations or corporations acting or claiming to act on behalf of them or any of them, be perpetually enjoined and restrained from engaging in any concerted plan or action calculated to secure to defendants, or any of them, their successors, transferees or assignees, the exclusive right to service the stitching requirement of any manufacturer or jobber in the Boton area

engaged in the manufacture and sale in interstate commerce, of women's sportswear apparel or the materials thereof, or to impose any compulsory method of allocating among such stitchers the stitching requirements of such jobbers or manufacturers;

5. That the plaintiff have such further and other relief as the nature of the case may require and as the court may deem necessary and proper in the premises.

and a prayer for costs.

FINDINGS OF FACT

Women's sportswear consists generally of jackets, skirts, slacks, shorts, blouses and jumper dresses made from wool, rayon and cotton fabrics. It is produced by jobbers who employ contractors to do the stitching and put on the necessary ornaments. The jobbers maintain places of business in Boston and vicinity. They all maintain sales offices in New York City. Some of them also maintain sales offices in other cities, and practically all of them employ salesmen who travel throughout the United States soliciting orders for women's sportswear.

At their places of business in Boston and vicinity, the jobbers cut the cloth or piece goods according to patterns designed by them, in accordance with the orders of their customers. They make their purchases of cloth through New York sales offices of the cloth-producing mills. These mills are located in various places outside of Massachusetts, as well as in Massachusetts. About 80% of the cloth used by the jobbers in the production of women's sportswear is manufactured in mills located outside of Massachusetts.

At times, the cloth purchased is sent to the jobber's place of business directly from the mill; at other times, it is sent to the jobber from the mill agent in New York. Although a jobber may at times maintain an inventory of cloth, very few did so during the period covered by this complaint. Most of the cloth was purchased as a result of specific orders taken by the jobbers for sportswear.

As a general rule, a jobber employed outside of his sales force, only a designer, a pattern maker, one or more cutters, shipping clerks and office help. The defendant contractors have shops or factories in the Boston area, where they have installed sewing machines. The contractors do at least 50% of all the stitching of women's sportswear produced in the Boston area.

It is the custom in the trade for the contractor to return the finished garments to the jobber, who immediately sends them to the purchaser. Since the jobbers manufacture sportswear only on orders, they do not stock finished garments.

Boston is the fifth largest manufacturing center of women's sportswear in the United States, figured on the basis of the number of persons employed in that industry, being surpassed by Los Angeles, New York, Chicago and Philadelphia respectively. Women's sportswear manufactured in the Boston area is sold throughout the country in competition with like goods manufactured in the other areas. At least 65% of all the women's sportswear produced in Boston is handled by the defendants, and at least 80% of all the finished garments produced here is sold to purchasers located outside of Massachusetts. The annual

gross value of the garments sold by the jobbers who signed the agreement with the defendant Association is about $8,800,000. The cost of stitching women's sportswear garments amounts to approximately 25% of the sales price of the garments.

The defendant Women's Sportswear Manufacturers Association, was organized at some time prior to December 1, 1943. It is an unincorporated association with a place of business in Boston, Massachusetts, composed of contractors who contract to perform the stitching operations on women's sportswear. All of the defendant contractors named in the complaint as being members of the defendant Association, with the exception of Hyman Medoff, were members of the defendant Association at some time during the period from March 1, 1944, to the date of the filing of the complaint. The defendants named in the complaint as officers or members of the executive committee of the defendant Association held their alleged positions at some time during the period from March 1, 1944, to the date of the filing of this complaint. The Association held meetings at the call of its secretary, who kept the minutes of the meetings. The defendant Rosenberg was the Executive Director of the defendant Association throughout the entire period covered by this complaint.

Beginning about March 1, 1944, the defendant Rosenberg notified certain jobbers that, in order for the contractors to operate their shops for said jobbers in the future, it would be necessary to establish equitable and fair business dealings to remove abuses and evils which caused conflict and

disputes between jobber and contractor, and that they must get in contact with him. This was done for the purpose of having the jobbers sign an agreement with the contractors concerning these matters.

A proposed written agreement (plaintiff's Exhibit 3), required the jobber to employ only members of the defendant Association, to refrain from dealing with non-member contractors, to distribute his work equitably among the Association contractors engaged by him, to furnish the contractor with written orders setting out the price for the work, to refrain from accepting secret rebates, and to pay to the contractor the amount of the unemployment compensation insurance, health and vacation fund and Labor Day pay attributable to the services of the contractors' employees.

Despite the urging of defendant Rosenberg and members of the Association, the jobbers had not signed any agreement with the Association up to September 25, 1944. On that date, Rosenberg, by letter to a representative of the jobbers, threatened a stoppage of production by the Association and its member contractors on October 2, 1944, if the matter were not adjusted by September 30, 1944. Shortly thereafter, a conference was held between representatives of the jobbers and representatives of the defendant contractors to consider the proposed agreement. At that meeting, a representative of the jobbers pointed out their objections to the proposed agreement, and informed the contractors' representatives that the jobbers had obtained an opinion that the proposed agreement was illegal. The jobbers refused to sign the proposed agreement at that time.

On October 2, 1944, work was stopped in the shops of contractors who were doing work for jobbers, known as Kenniston Klassics, Banner Sportswear and College-Town Sportswear. The aforementioned jobbers were informed by their contractors that the reason for the work stoppage was their refusal to sign the proposed agreement with the defendant Association. These jobbers then obtained a restraining order in the state court and thereafter work on their goods was resumed by the contractors.

Although there was testimony that the representatives of the International Ladies' Garment Workers' Union had ordered a work stoppage by some of its members on goods of some of the jobbers in September of 1944, it appeared that the stoppages in the above-mentioned plants were ordered by the defendant Association because the owners of the jobber establishments refused to sign the agreement submitted to them by the defendant Association. The defendant contractors are independent contractors who are not members of or qualified for membership in the International Ladies' Garment Workers' Union. There is no evidence that said Union participated in drawing up the proposed agreement between the jobbers and contractors.

Shortly after the restraining order was issued by the state court, further negotiations between the Association and the jobbers took place. As a result of these negotiations, the proposed agreement was revised, and, as so revised, was signed by 21 jobbers on October 17, 1944. (Plaintiff's Exhibit 4.)

The signed agreement required, inter alia, that the jobber should give all of his work to Association contractors available for performance of his work, provided such contractor was comparable as to price and quality of work with non-member contractors, but if a member withdrew from the Association, he could finish the jobber's work already in hand; or, if any non-member contractor was, at the time of the signing of the Association's agreement, employed by a jobber under contract, the jobber could continue to employ such contractor, even if he did not become an Association member. The jobber was required to distribute his work equitably among Association contractors engaged by him and to furnish the contractor with a written order setting out the price, and was forbidden to receive secret rebates from the contractor. The jobber was required to deduct from the amount due the contractor, a sum computed by the defendant Association to cover unemployment compensation insurance and the health and vacation fund of the contractors' employees. Compulsory arbitration of disputes between jobber and contractor was provided for, as were the mechanics for arbitration. All individual agreements between jobber and contractor were made subject to the provisions of this agreement. Other provisions required the Association to assist the jobber in getting sufficient contractors to do his work. The contractor agreed to complete all orders given him with due regard to the delivery dates set forth in the orders; and both the contractors and jobbers agreed that there should be no pirating of styles,

and that styles submitted to a contractor by a jobber would not be submitted by the contractor to any other jobber.

This agreement was still in force at the time this complaint was filed. There is little, if any, substantial evidence as to just how the arrangement worked out.

One of the purposes of the Association was to maintain the standard of prices charged the jobbers for doing the stitching operations on the sportswear garments in the Boston area.

None of the defendant contractors performed any work on goods in a shop or establishment outside of Massachusetts. They did not receive any goods to be worked on from, nor did they deliver any completed sportswear garments to, any jobber or anyone else outside of Massachusetts.

None of the defendants attempted to fix wholesale or retail prices of women's sportswear or to boycott any concern or interfere with the manufacture or sale of its goods outside of Massachusetts.

DISCUSSION

The Sherman Act does not condemn every contract, combination or conspiracy which may in some degree interfere with interstate commerce. *Apex Hosiery Company v. Leader, et al*, 310 U. S. 469, 486. Only those activities which are shown to be intentional restraints on commerce, or those which have such a direct and immediate effect upon commerce, as to enable the court to draw an inference that they were intended to restrain commerce, are proscribed by the Act. Or, as

stated in *United Leather Workers* v. *Herkert*, 265 U. S. 457, 471, a case, like the instant one, involving an interference with manufacturing, "* * * It is only when the intent or necessary effect upon such commerce in the article is to enable those preventing the manufacture to monopolize the supply, control its price or discriminate as between its would-be purchasers, that the unlawful interference with its manufacture can be said directly to burden interstate commerce."

There is no direct evidence that these defendants had any intention of restraining interstate commerce in cloth or in the finished sportswear garments. Unless, therefore, by their activities they actually or potentially monopolized the supply of these articles, controlled its price, or discriminated between would-be purchasers, they cannot be held to have so directly and immediately restrained commerce as to permit an inference of illegal intent.

It is to be noted that all the activities and operations of the defendants were confined exclusively to Massachusetts. None of the defendant contractors carried on any business in any other state or worked for any jobbers outside of Massachusetts. They neither received from, nor sent any goods to anyone outside of Massachusetts. Also, none of the defendants attempted to fix any wholesale or retail prices for women's sportswear or to boycott any concern or its goods outside of Massachusetts.

However, the mere fact that the defendants were not themselves engaged in interstate commerce, would not exculpate their activities from

the condemnation of the Act, if such activities constituted an unreasonable restraint on interstate commerce. *Boyle v. United States,* 40 F. (2d) 49.

Unquestionably the prices charged by these contractors for stitching sportswear garments, are reflected in the wholesale and retail prices of the finished garments. Also, any work stoppage on the jobbers goods would slow down the stream of sportswear entering into interstate commerce and the purchase of cloth from out of state mills, as well as the taking of orders for finished garments in other states. However, in my opinion, such results do not constitute sufficiently direct and immediate effects upon interstate commerce upon which to predicate an inference of illegal intent.

It has been held that interference with the manufacture of a product within a state, which completed product, to the knowledge of the alleged conspirators, was to be shipped in interstate commerce to fill orders already received and accepted from the Company's customers in other states, is not, without more, a direct and immediate restraint on interstate commerce within the scope of the Sherman Act, but, rather, it has merely an incidental, indirect and remote effect upon such commerce. *Apex Hosiery Company* v. *Leader, et al.,* 310 U. S. 469; *United Mine Workers, et al.* v. *Coronado Coal Company, et al.,* 268 U. S. 295; *United Leather Workers* v. *Herkert,* 265 U. S. 457; *Industrial Association* v. *United States,* 268 U. S. 64.

It has also been decided that the fact that the raw materials used in the manufacture of a prod-

uct have been purchased in another state and shipped interstate to the manufacturer, does not, of itself, render a contract or conspiracy prohibiting its manufacture into a finished product a direct and immediate restraint on interstate commerce. *Apex Hosiery Company* v. *Leader, et al.*, 310 U. S. 469; *Levering & Garrigues Company, et al.* v. *Morrin, et al.*, 289 U. S. 103; *Industrial Association* v. *United States*, 268 U. S. 64.

Counsel for the government argue in their brief, however, that the instant case is one where there is a direct and immediate restraint upon "a stream of commerce" within the purview of the Act. They allege that the taking of orders in other states, the purchase of cloth in other states in pursuance of those orders, the manufacture of garments to fill the orders from cloth purchased in interstate commerce, and the shipment of the finished garments to the out-of-state purchasers, constitutes a flow or stream of commerce which the defendants directly and immediately restrained by their activities within Massachusetts.

In support of this argument, they cite the case of *Swift & Company* v. *United States*, 196 U. S. 375, and several cases decided under the National Labor Relations Act. While it is true that in the *Swift case* the court referred to the trade in cattle and meat as a stream of commerce, they also found that the purpose of the conspiracy was to directly and immediately restrain interstate commerce for the purpose of price fixing. Had the court been unable to make such a finding, it seems reasonable to believe that a different result would have been reached. *Swift & Com-*

pany v. *United States*, 196 U. S. 375, 397, 398; *Anderson* v. *United States*, 171 U. S. 604; *Hopkins* v. *United States*, 171 U. S. 578.

That the term "affect commerce" used in the National Labor Relations Act, and the decisions construing it, does not expand the meaning of "restraint of commerce" as used in the Sherman Act, was decided in *Leader, et al.* v. *Apex Hosiery Company*, 108 F. (2d) 71, which decision was affirmed in *Apex Hosiery Company* v. *Leader, et al.*, 310 U. S. 469. See also *Blankenship* v. *Kurfman*, 96 F. (2d) 450, 456. Therefore, cases like *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, and *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, interpreting the Wagner Act, are not in point on this question.

In summary, there is no evidence of any intent on the part of the defendants, who had no direct and immediate connection with or control over interstate commerce, to burden interstate commerce. There was no evidence of any direct and immediate restraint upon interstate commerce resulting from the defendants' activities, from which an illegal intent can be inferred. They did not seek to monopolize the supply of sportswear garments, or to control its price, or to discriminate between would-be purchasers. Their activities were purely local and directly affected only the manufacture of women's sportswear in Massachusetts. The effect of their activities on interstate commerce was indirect and too remote to bring them within the condemnation of Section 1 of the Sherman Act.

CONCLUSION OF LAW

On the basis of the above findings of fact, I conclude that none of the defendants committed any violations of the Sherman Act as alleged in the complaint.

The plaintiff's prayers for an injunction and other relief should be denied.

The clerk will prepare an order for judgment for the defendants.

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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 37

THE UNITED STATES OF AMERICA, APPELLANT

v.

WOMEN'S SPORTSWEAR MANUFACTURERS ASSOCIATION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court for the District of Massachusetts (R. 26-35) is reported in 75 F. Supp. 112.

JURISDICTION

The district court entered judgment for appellees on December 10, 1947 (R. 26). The petition for appeal was filed on February 9, 1948, and was allowed the same day (R. 222-223). The jurisdic-

tion of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as last amended by Section 17 of the Act of June 25, 1948, Pub. Law 773, 80th Cong., 2d sess., 15 U.S.C. 29. Probable jurisdiction was noted on April 19, 1948 (R. 231).

QUESTION PRESENTED

Whether restraints imposed upon Massachusetts jobbers of women's sportswear engaged in interstate commerce by a combination of Massachusetts contractors who as independent businessmen perform an essential part of the manufacturing process for the jobbers restrain interstate commerce in violation of Section 1 of the Sherman Act.

STATUTE INVOLVED

The Act of July 2, 1890, 26 Stat. 209, known as the Sherman Act, provides in part as follows:

> Section 1 [as amended by the Act of August 17, 1937, 50 Stat. 693]. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * * [15 U.S.C. 1.]
>
> Sec. 4 [as amended by the Act of March 3, 1911, Sec. 291, 36 Stat. 1167]. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts,

> under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. * * * [15 U.S.C. 4.]

STATEMENT

This is an equity suit brought by the United States in the District Court for the District of Massachusetts against Women's Sportswear Manufacturers Association, an unincorporated association doing business in Boston, Massachusetts, its officers and members, charging appellees with being engaged in a combination and conspiracy to restrain interstate commerce in violation of Section 1 of the Sherman Act, and praying that the court dissolve appellee Association, cancel an allegedly illegal agreement entered into by it, and enjoin the consummation by it of similar agreements in the future (R. 1-11).

The court denied motions filed by various appellees seeking to dismiss the complaint as failing to state a cause of action (R. 26). At the ensuing trial, 22 witnesses testified, all but one of them called by the Government. Following the conclusion of the trial and oral argument, the court rendered an opinion concluding that the activities of appellees were local in nature, involving only an interference with manufacturing, and neither intentionally nor directly involving restraints on interstate commerce (R. 26-35).

We do not understand that there is any significant dispute between the parties as to the facts of

the case. The following statement is based upon the findings of fact, all of which the Government accepts, and upon the evidence underlying the findings.

Boston is the fifth largest producing center of women's sportswear (jackets, skirts, blouses, and other garments made from woolen, rayon, and cotton fabrics) (R. 29, 171-172). The Boston sportswear business is carried on by so-called jobbers who compete on a national basis with each other and with producers from other areas (R. 29, 40, 171-172). The Boston jobber invariably maintains sales offices in New York and often in other cities, and employs one or more salesmen, depending on the scale of operations, who travel throughout the United States seeking orders (R. 28, 69-70, 114-115). The jobber customarily maintains little by way of inventory; he manufactures mostly only upon a specific order (R. 29, 118, 121; cf. R. 90-91). On receipt of an order from his sales office or force, the jobber purchases the fabrics necessary to fulfill the order. Usually the jobber places his order for the fabrics through sales offices which producing mills customarily maintain in New York, and the fabrics may be sent to the jobber either directly from the mill or from its New York sales agent (R. 28-29, 71-72, 87, 124). About 80% of the cloth used by Boston area jobbers in the production of women's sportswear is manufactured in mills located outside of Massachusetts (R. 29, 83, 90, 103, 107).

The jobber cuts the fabric according to his patterns and the customer's order, and then usually employs, to do the stitching and put on the necessary ornaments, an independent contractor in the Boston area who has a shop or factory in which sewing machines have been installed. The contractor, upon completion of the stitching, returns the garments to the jobber, who immediately ships them to the customer (R. 28-29, 86). A few jobbers perform some or all of the stitchwork themselves (R. 133, 189). The cost of stitching was found to be approximately 25% of the sales price of the garments (R. 29); several witnesses testified that the figure was one-third (R. 57, 86, 98-99, 134, cf. R. 140-141; 146, 149). The court expressly found that "the prices charged by these contractors for stitching sportswear garments, are reflected in the wholesale and retail prices of the finished garments" (R. 33). At least 80% of the sportswear produced in Massachusetts is sold to customers located outside of that state (R. 29, 76, 83, 86, 87, 90, 98, 103, 107).

The defendant Association, organized sometime before December 1943, is an organization of contractors in the Boston area who handle 50% to 65% of all sportswear produced in Boston (R. 29). At all times throughout the period covered by the complaint defendant Bernard Rosenberg was the Executive Director of the Association (R. 30, 150, 151). Beginning about March 1, 1944, Rosenberg notified certain jobbers that continu-

ance of their relations with contractors necessitated the establishment of equitable business dealings to remove evils which created disputes between jobbers and contractors (R. 30; Exs. 6 and 7, R. 216-217). "This was done for the purpose of having the jobbers sign an agreement with the contractors concerning these matters" (R. 30).

"A proposed written agreement (Plaintiff's Exhibit 3 [R. 207-210], required the jobber to employ only members of the defendant Association, to refrain from dealing with non-member contractors, to distribute his work equitably among the Association contractors engaged by him, to furnish the contractor with written orders setting out the price for the work, to refrain from accepting secret rebates, and to pay to the contractor the amount of the unemployment compensation insurance, health and vacation fund and Labor Day pay attributable to the services of the contractors' employees" (R. 30).

Despite the urgings of Rosenberg, the jobbers had reached no agreement with the defendant Association by September 25, 1944 (R. 30). On that date Rosenberg wrote to the Executive Director of the Wholesale Garment Association, an organization of jobbers, threatening a stoppage of production by contractor members of appellee Association on October 2, 1944, if its demands were not met by September 30, 1944 (Ex. 2, R. 207). A conference of representatives of the jobbers and

of appellee contractors met (R. 30, 47) to consider an agreement proposed by appellee Association (Ex. 3, R. 207-210). Appellee Rosenberg, at this conference, repeated his threats to stop production on the jobbers' work unless the agreement was signed (R. 47, 74). The jobbers refused to sign the proposed agreement, and gave as a ground of objection that their attorneys advised that the proposed agreement, which did not differ materially from the agreement subsequently executed, was violative of the antitrust laws (R. 30, 47-48, 60-62).

On October 2, 1944, contractors then engaged in work for three jobbers stopped work.[1] Appellee Association ordered the stoppages because the jobbers refused to execute the agreement submitted to them by the Association, and the affected jobbers were so informed by their contractors (R. 31, 74-75, 125-126). These jobbers then obtained a restraining order in the state court and the contractors thereafter resumed work (R. 31, 48). Further negotiations between appellee Association and the jobbers immediately followed, as a result of which the proposed agreement was revised. As so revised, the agreement was signed by 21 jobbers on October 17, 1944, and it remained in force unaltered at the time this proceeding was commenced. (R. 31, 48-50.) The 21 jobbers signatory to the agree-

[1] These jobbers were Kenniston Klassics, Banner Sportswear, and College-Town Sportswear (R. 31, 48), all of whom were subsequently required to sign the agreement (Ex. 4, R. 210-213).

ment manufacture a substantial percentage of all women's sportswear produced in the Boston area,[2] their production having an annual gross value of about $8,800,000 (R. 29).

The basic provisions of the executed agreement (Ex. 4, R. 210-213), to which all individual agreements between jobbers and contractor are made subject, is the requirement that the jobber shall give all his work to Association contractors in good standing with the International Ladies' Garment Workers Union (ILGWU) and available for performing his work, provided such contractors are comparable as to price and quality of work with non-member contractors. A non-member contractor employed by a jobber at the time of execution of the agreement may, however, continue to work for the jobber even though the contractor does not become a member of the Association. "The Association agrees to assist the Jobber in getting sufficient contractors as the amount of work of the Jobber may equitably require, and the Jobber agrees that in the distribution of his work he will divide such work as equally and equitably as possible among the Association Contractors engaged by him" (R. 211). The jobber is required to furnish the contractor with a written order setting out the price, and is forbidden to receive secret rebates from the

[2] The court made no explicit finding in this respect. Of the two witnesses who testified on this point, one estimated roughly that the 21 jobbers signatory to the agreement produced 50% of all sportswear manufactured in the Boston area (R. 52); the other, between 80 and 90 per cent (R. 185, 188-189).

contractor. Provision is also made for compulsory arbitration of disputes.[3]

While the court found that there was little evidence of operations under the agreement (R. 32), the record furnishes some indication. Thus, the minutes of a meeting of the Association of November 10, 1944, note the appointment of a "committee on designation of contractors to the jobbers" (Ex. 10, R. 219, 220). Despite the obscurity of the phrase, it seems reasonably clear that the function of the committee was the "equitable" apportionment of the jobber's work among the contractors which the agreement contemplated. Minutes of a meeting of May 16, 1945, also include this paragraph (Ex. 12, R. 221):

> It is requested to investigate the Ernest Donath Sportswear about giving out work to non-members of the Association.

The district court found that "one of the purposes of the Association was to maintain the standard of prices charged the jobbers * * *." (R. 32).

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[3] In three aspects of present significance, the jobbers succeeded in obtaining better terms than those in the agreement first proffered by the Association (Ex. 3, R. 207-210). (1) The original proposal would not have permitted jobbers to continue relations with those non-Association contractors with whom they were, respectively, dealing at the time of the agreement. (2) The original proposal would have prevented jobbers from undertaking to do their own stitching work, beyond the extent to which they were so engaged at the time of the agreement. (3) The executed agreement (Ex. 4, at R. 211) required jobbers to restrict their dealings to Association members only as long as they were "comparable as to price and quality of work" with non-member contractors.

There was, in fact, substantial uniformity in prices charged by contractors (R. 147). Price discussions took place at meetings of appellee Association in which contractors reported prices being received by them and "whether someone is working for less than the other" (R. 95). The Association's president stated that the contractors should be combined "in case prices will come down after the war" (R. 93).

The district court made no findings as to the terms upon which non-member contractors might be admitted to the Association. It is, however, apparent from the record that there are impediments to membership. The following is an extract from the minutes of the Association meeting of October 31, 1944 (Ex. 9, R. 218):

> Mr. Morris Isenberg, suggested that it would be advisable to admit members into the association who have been already established in the business for years and not new comers in the trade.
>
> Mr. Rosenberg, suggested that we have a membership committee and that all applications be sent to the membership committee for approval before action is taken at the meeting. A motion was made and seconded to have a membership committee, motion carried. * * *

Subsequently, the minutes of a meeting of November 14, 1944, reflect reference of an application for membership to the Membership Committee thus set up "for investigation and approval" (Ex.

10, R. 219). Applications of former members for reinstatement were referred to the Membership Committee "for action" (*ibid.*, R. 220).[4]

Attempted Labor Union Orientation of the Agreement. Appellee contractors maintain shops or factories in which machinery is installed, and hire workers many of whom are members of the International Ladies' Garment Workers Union. The contractors themselves are independent businessmen who are not members of, or qualified for membership in, this labor union (R. 190).

The draft of agreement first proposed by appellee Association (Ex. 3, R. 207-210) contained no reference to the ILGWU beyond a provision which, after recognizing that most contractors were bound by contract to provide funds to the ILGWU for a health and vacation fund, would have obligated the jobbers to pay to contractors amounts so assessed.[5] Following the jobbers' objection to the proposed

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[4] In addition to the power to exclude from membership, appellee Association may at times have endeavored to employ coercive means to force non-member contractors into membership. The following entry in the minutes of the meeting of December 26, 1944 (Ex. 11, R. 221), is not clarified by anything further in the record:

> Mr. Rosenberg, reports that he has an appointment with Mario on Wednesday Dec. 27th, 1944 for the purpose of him joining the Association. It is the consensous [*sic*] of opinion that the Union take steps on the following shops: Fields, Fishel and J. Rosenberg, for them to join the Association.

[5] These payments had been borne by the contractors, and under the agreement, as finally executed, they continue to be borne by the contractors. But the jobber now deducts from monies owed to the contractor the amount payable on account

agreement, as generally violative of the antitrust laws, a revision was prepared (before this Court's decision in *Allen Bradley Co.* v. *Local Union No. 3*, 325 U. S. 797) which, as actually executed, makes extensive references to the ILGWU (Ex. 4, R. 210-213). Thus, it recites that appellee Association, the contractors, and jobbers all are in contractual relationship with the ILGWU, and it describes the undertakings of the parties "as in furtherance of their several obligations to said I.L.G.W.U." The key provision whereby the defendant contractors sought to monopolize the business of the jobbers reads (Ex. 4, R. 210, 211):

> The Jobber, having already agreed with said I.L.G.W.U. to employ only contractors who are in contractual relationship with the said I.L.G.W.U., agrees to give all his work to members of the Association who are in good standing with said I.L.G.W.U. * * *

The District Court found, however, that "there is no evidence that said Union participated in drawing up the proposed agreement between the jobbers and contractors" (R. 31). Kramer, local manager of the Boston local of ILGWU and the

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of the ILGWU fund and remits such amount to a designated agent of the Association (Ex. 4, R. 210, 212).

The contractors also sought originally to shift to the jobber the economic burden of federal and state payroll taxes to establish unemployment insurance and old age assistance plans (Ex. 3, R. 207, 209). Again, the eventual agreement provided only that the jobbers should deduct such sums (payable to the Association's nominee) from monies otherwise owing to the contractors (Ex. 4, R. 210, 212).

only witness called by appellees, testified that the Union had long had contractual relations both with jobbers and contractors (R. 181-182). It did insist that its agreements with jobbers provide that the jobber use only contractors who had agreements with the ILGWU, believing that control of contractors through the jobbers was appropriate because contractors in the main were composed of less responsible elements (R. 173, 191-192). But no union agreement required the jobbers to give work to contractors who were members of the Association (R. 184). Kramer favored the contractors getting together, and he attended a meeting at which the final contract was drafted (R. 49, 57, 84, 169-170).

The Association does not represent a grouping of contractors who have "union shops" through agreement to employ ILGWU members. Despite the declarations of the agreement, some of the contractor members of the Association had no agreement with the ILGWU;[6] some contractors who are not members of the Association have agreements with the ILGWU and are "union shops."[7]

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[6] Kramer, manager of the local Boston affiliate of ILGWU and a vice-president of the latter, testified that he had no contract, written or oral, with appellees Rocco Cerasulo (R. 179), and Bella Kritchmar (R. 181). An agreement with appellee Kaufman had expired in 1946 (R. 179); and one with appellee LaPorto had been made only in late 1945 (R. 181).

[7] There is no direct evidence in the record on this point. But this would seem to be a necessary inference from Kramer's testimony that only 6 or 7% of the contractors in Boston

Nor is it true, despite the agreement's recitals, that all jobbers signatory to the agreements had entered into contracts with the ILGWU.[8] Furthermore, there are apparently a number of jobbers, not signatory to the agreement, who have agreements with the ILGWU (R. 187-188).

The district court concluded that appellees' activities were purely local, affecting directly only the manufacture of sportswear in Massachusetts, and having only an indirect and remote effect on interstate commerce. It held that only such a combination as either intentionally restrained interstate commerce or had a sufficiently direct and immediate effect on such commerce as to enable a court to infer an intent to restrain interstate commerce violated the Sherman Act. It considered that there was no direct evidence of intent to restrain interstate commerce and that such an intent would be inferred only if the combination's activities enabled it actually or potentially to monopolize articles of commerce, control their prices, or discriminate between potential purchasers. (R. 32-35.)

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operate "non-union shops" (R. 186), whereas the 20 appellees had only about 50% to 65% of the total business performed by the 40 contractors in the area (R. 189-190).

[8] Kramer, in his testimony, went through the list of jobbers who executed the Association's agreement (Ex. 4, R. 210), and identified four jobbers who were not in contractual relationship with the ILGWU or its Boston local (R. 181-183). They were Zakonit, Inc., Churchill Sportswear, Elleny Sportswear, and Franklin Sportswear Company. Kramer also testified that he had an oral agreement with Colback Sportswear, Inc. (R. 183), but Colback's treasurer testified that its employees were not members of any union (R. 83).

SPECIFICATION OF ERRORS TO BE URGED

The district court erred:

1. In determining that the restraints resulting from appellees' combination were not restraints upon interstate commerce prohibited by Section 1 of the Sherman Act.

2. In concluding that none of the appellees committed any violation of the Sherman Act, and in denying appellant's prayer for relief.

SUMMARY OF ARGUMENT

1. The types of restraint upon competition undertaken by appellees are unquestionably forbidden by the Sherman Act. It does not appear that a labor union was a party to the combination, but labor participation could not in any event render the combination exempt from the Act. *Allen Bradley Co.* v. *Local Union No. 3,* 325 U. S. 797.

2. This Court has held that the Sherman Act is an exercise of the full commerce power of Congress over the types of restraints which the statute forbids; it thus plainly applies to intrastate activities restraining interstate commerce. Appellees' plan was designed to interfere with the business of the jobbers, who were clearly engaged in interstate commerce since 80% of the cloth they purchased and the garments they sold crossed state lines. In concertedly refusing to work for any jobber who would not deal with them exclusively, appellees threatened to destroy the jobbers' entire business, and thus to halt both the outgoing shipments of

sportswear and incoming shipments of cloth. In addition, a purpose and undoubtedly an effect of the scheme was to stabilize prices paid to contractors by the jobbers. This would have the effect of lessening interstate competition among the Boston jobbers and, by increasing their costs, of impairing their competition with other manufacturing centers.

Such restraints upon commerce have often been held to violate the Sherman Act. The case is stronger than the *Mandeville Farms* case, in which the effect upon the interstate price structure and competition was not so clearly shown. As the *Mandeville* case emphasizes, an integrated interstate industry cannot be viewed as constituting merely local segments whose operations do not affect other portions of the business.

Proof of a substantial economic effect upon interstate commerce is sufficient, irrespective of whether the effect may be described as "direct" or "indirect" from the standpoint of immediate causation within the meaning of some of the older cases. The fact that the combination was confined to a single local area, and that its primary concern was with the industry in that area is immaterial, when the obvious consequences of the plan were to restrain interstate commerce.

ARGUMENT

Appellees' Combination Was In Restraint of Commerce Among the States In Violation of the Sherman Act

1. *Appellees were engaged in the type of restraint prohibited by the Act.* Appellees have engaged in an actual and threatened boycott against jobbers who refused to agree to deal with them exclusively,[9] have required that work be allocated "equitably" —and therefore not on a competitive basis—among the contractors engaged by a jobber, and have acted in a manner designed to maintain price standards and eliminate price competition. Assuming the requisite effect upon interstate commerce, these types of restraint upon commercial competition violate the Sherman Act *per se*. *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469. Boycotts: *Fashion Originators' Guild* v. *Federal Trade Commission*; 114 F. 2d 80 (C.C.A. 2), affirmed, 312 U. S. 457; *International Salt Co.* v. *United States*, 332 U. S. 392, 396. Allocation of customers or territories: *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271, 291 (C.C.A. 6), affirmed, 175 U. S. 211; *United States* v. *Aluminum Co.*, 148 F. 2d 416, 427 (C.C.A. 2); *Pfotzer* v. *Aqua-Systems*, 162 F. 2d 779, 784 (C.C.A. 2). Price restrictions: *United States* v. *Trenton Potteries Co.*, 273 U. S. 392; *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150.

Appellees have argued that their conduct is not of unlawful type because they were cooperating

[9] The fact that certain exceptions were permitted does not change the character of the offense. Cf. *International Salt Co.* v. *United States*, 332 U. S. 392, 397-398.

with a labor union, the International Ladies Garment Workers Union. The trial court found that "There is no evidence that said Union participated in drawing up the proposed agreement between the jobbers and contractors" (R. 31). Even if it had, however that fact would not provide appellees with a defense, inasmuch as participation by a labor organization with employers in an otherwise unlawful combination does not take the combination outside the Sherman Act. *Allen Bradley Co.* v. *Local Union No. 3,* 325 U. S. 797.

But, in any event, appellees did not establish that the union was a party to the unlawful scheme. For appellee contractors are independent business concerns; they are not members of the union and are not eligible for membership. They employ labor and have the same contractual relations with the union as any other employer. See R. 190, 178 *et seq.* Their relation to the workers is more distant than that of the fishermen held to be *entrepreneurs* and not employees in *Columbia River Packers Association* v. *Hinton,* 315 U. S. 143. Although the union was interested in having the jobbers deal only with unionized contractors, some non-unionized contractors were in the Association and some unionized contractors were not. See page 13, *supra.* The recitals of the agreement finally adopted, purporting to base the agreement on obligations to the I.L.G.W.U. (R. 210-211), must be considered in the light of the facts that the early

drafts had contained no such intimation, and that the revision of the agreement occurred after the first drafts had been challenged as in violation of the antitrust laws. See also R. 184.

The remainder of this brief assumes that the restraints discussed are of the sort which the Sherman Act forbids.

2. *The conspiracy restrained interstate commerce.* This brings us to the basic issue in the case, whether interstate commerce was sufficiently affected to bring appellees' conduct within the Sherman Act. This Court has frequently held that the Sherman Act extends to intrastate activities which affect or restrain interstate commerce. *Mandeville Island Farms* v. *American Sugar Co.*, 334 U. S. 219; *United States* v. *Frankfort Distilleries*, 324 U. S. 293; *Local 167* v. *United States*, 291 U. S. 293; *United States* v. *Patten*, 226 U. S. 525; *Swift & Co.* v. *United States*, 196 U. S. 375; *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 495-498. The test applied in Sherman Act cases has been the test applied under the Commerce Clause of the Constitution itself.[10]

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[10] See cases cited above and *United States* v. *E. C. Knight Co.*, 156 U. S. 1; *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344; *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295; *United Leather Workers* v. *Herkert & Meisel Trunk Co.*, 265 U. S. 457; cf. *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601; *Wickard* v. *Filburn*, 317 U. S. 111.

Indeed, this Court has repeatedly declared that: "with reference to commercial trade restraints such as [the Act reaches], Congress, in passing the Sherman Act, left no area of its constitutional power unoccupied; it 'exercised all the power it possessed'." *United States* v. *Frankfort Distilleries*, 324 U. S., at 298; *Apex Hosiery Co.* v. *Leader* 310 U. S. 469, 495. *United States* v. *South-Eastern Underwriters*, 322 U. S. 533, 553. These principles have often been applied to bring within the Sherman Act the activities of local combinations whose conduct interfered with interstate commerce. *Mandeville Island Farms* v. *American Sugar Co.*, *Local 167* v. *United States*, and *United States* v. *Patten*, cited *supra*; *Montague & Co.* v. *Lowry*, 193 U. S. 38; *Allen Bradley Co.* v. *Local Union No. 3*, 325 U. S. 797; *United States* v. *Brims*, 272 U. S. 549.

In this case the jobbers, whose business has been restrained by appellees, are clearly engaged in interstate enterprise. They purchase 80% of the cloth used from outside Massachusetts and sell about the same proportion of the finished product to purchasers in other states (R. 29). In concertedly refusing to work for any jobber who would not deal with them exclusively, appellees threatened to destroy the jobbers' entire business. This would have had the effect both of halting the outgoing shipments of sportswear and the incoming shipments of cloth, and of forcing recalcitrant jobbers out of interstate competition.

In addition, a purpose and undoubtedly an effect of the scheme was to stabilize prices paid to contractors by the jobbers. Although prices were not directly fixed, the provisions of the contract and the concerted activities of the contractors clearly made departure from the prevalent uniform prices unlikely. See pp. 9-10, *supra*. Inasmuch as the payments to the contractors, who performed the major portion of the jobbers' manufacturing operations, constituted an important part of the jobbers' cost (see p. 5, *supra*), the elimination of competition as to this cost factor would affect competition among the jobbers in the interstate market in two ways. By establishing a partially uniform basis of costs, it would lessen the competition among the Boston jobbers themselves in the interstate market. Secondly, the absence of competition with respect to contractors' costs would inevitably increase such costs and thereby, as the findings (R. 33) indicate, tend to increase the prices at which the jobbers must sell their garments to purchasers in other states. Such a forced increase in interstate prices not only in itself restrains interstate commerce, but it also impairs the capacity of the Boston jobbers to compete with jobbers from other manufacturing centers in the interstate market.

Such restraints have often been held to be restraints on interstate commerce within the meaning of the Sherman Act. More clearly here than under the allegations of the complaint in the

Mandeville Farms case decided last Term (334 U. S. 219), will the removal of local competition have the effect of "lessening of competition in the later interstate phases of the over-all activities". 334 U. S. at 240. The Court there referred to "the necessary and inevitable effect of that agreement, in the setting of the industry as a whole, to reduce competition in the interstate distribution of sugar" (*id.* at 241.) The opinion continued, "The idea that stabilization of prices paid for the only raw material consumed in an industry has no influence toward reducing competition in the distribution of the finished product, in an integrated industry such as this, is impossible to accept" (*ibid*).

In the *Mandeville* case, the Court was speaking of stabilization of the price for the raw material. Here appellees have combined to stabilize the price of the primary manufacturing operation. But the restraining effect of each upon interstate commerce in the ultimate product is of the same kind. Indeed, the dissenting opinion of Mr. Justice Jackson in the *Mandeville* case clearly implies that if there had been a specific allegation that "the cost * * * of the product which did move in interstate commerce was in any way affected" (334 U. S., at 248), a cause of action under the Sherman Act would have resulted. Such a finding as to effect upon interstate price was made in the instant case (R. 33, *supra*, p. 5).

Apart from the effect upon prices, the threat to boycott a business enterprise engaged in interstate commerce, which will force it out of business and interrupt interstate shipments to and from it, is clearly in restraint of interstate commerce within the meaning of the Sherman Act. *Montague & Co.* v. *Lowry, Local 167* v. *United States, United States* v. *Frankfort Distilleries, United States* v. *South-Eastern Underwriters, Fashion Originators' Guild* v. *Federal Trade Commission*, all *supra*. It is immaterial whether or not the immediate impact of the restraint is upon the local aspect of the enterprise, as long as interstate commerce is substantially affected. In addition to the Sherman Act cases cited, decisions under the National Labor Relations Act, including *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, in the very industry involved here, attest to the fact that an interruption of manufacturing in the center of the stream of commerce has a direct restraining effect on the flow of commerce to and from the manufacturing enterprise.

The *Mandeville* case emphasizes that an integrated interstate industry cannot be broken up into local segments whose operations do not affect other portions of the business. In that case the restraint upon growers' sales occurred before interstate commerce began. In the instant case, the restraint is upon manufacture in the middle of what has been characterized as a current of

interstate commerce[11] from the producer of the raw material to the ultimate consumer. The elimination of competition in an important phase of the processing of a commodity, most of which has come from and will move to other states, necessarily will interfere with the interstate aspects of the industry.

The court below relied largely upon *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, and other labor cases discussed in the *Apex* opinion. See R. 32-34. But the *Apex* case held only that the physical interruption to interstate commerce resulting from the seizure of a factory by force during the course of a labor dispute was not the type of restraint against which the Sherman Act was aimed. The restraints of trade at which the Act was directed, the court held, were restraints upon free competition among business men—precisely such as we have in the case at bar. See, in addition to *Apex*, *Allen Bradley Co.* v. *Local Union No. 3*, 325 U. S. 797, 806, 809. The *Apex* opinion on its face definitely and repeatedly rejected the contention made by appellees below that a restraint of the type reached by the Sherman Act and affecting interstate commerce sufficiently to come within the scope of the federal commerce

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[11] See *Swift & Co.* v. *United States*, 196 U. S. 375, 399; *Stafford* v. *Wallace*, 258 U. S. 495, 516, 518-519; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 34-36; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 35-36.

power may nevertheless not be within the statute's coverage. For the Court stated in the *Apex* case pp. 495, 498):

> * * * The addition of the words "or commerce among the several states" was not an additional kind of restraint to be prohibited by the Sherman Act but was the means used to relate the prohibited restraint of trade to interstate commerce for constitutional purposes, * * * so that Congress, through its commerce power, might suppress and penalize restraints on the competitive system which involved or affected interstate commerce. * * * It was in this sense of preventing restraints on commercial competition that Congress exercised "all the power it possessed." *Atlantic Cleaners & Dyers* v. *United States, supra*, [286 U. S.] 435.
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> * * * * *
>
> * * * In enacting the Sherman law they took over that concept by condemning such restraints wherever they occur in or affect commerce between the states. * * *
>
> * * * This Court has since repeatedly recognized that the restraints at which the Sherman law is aimed, and which are described by its terms, are only those which are comparable to restraints deemed illegal at common law, although accomplished by means other than contract and which, for constitutional reasons, are confined to transactions in or which affect interstate commerce.

The court below was apparently misled by the language of the older labor cases[12] into holding that the statute did not extend to intrastate transactions which did not "directly and immediately" affect interstate commerce. These cases, however, were employing the "direct-indirect" formula primarily in a constitutional context. The lower court's theory as to the construction of the Sherman Act is in substance the formula as to the extent of constitutional power over intrastate transactions enunciated by a majority of this Court in *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 307-308—that the power extends to intrastate acts which *directly* affect interstate commerce, and that the effect, in order to be direct, must be one which "shall operate proximately—not mediately, remotely, or collaterally—to produce the effect. It connotes the absence of an efficient intervening agency or condition."

But this Court has abandoned the test of immediate causation, which—though perhaps relevant in tort law—is totally unrelated to the objects of both the commerce clause and the Sherman Act, and now is concerned with whether there is in fact a substantial practical effect upon interstate commerce. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 303 U. S. 1; *Santa Cruz Fruit Packing Co.* v. *National Labor*

[12] *United Leather Workers* v. *Herkert & Meisel Trunk Co.*, 265 U. S. 457; *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 395; *Industrial Association* v. *United States*, 268 U. S. 64; *Levering & Garrigues* v. *Morrin*, 289 U. S. 103.

Relations Board, 303 U. S. 453; *United States* v. *Darby*, 312 U. S. 100; *Wickard* v. *Filburn*, 317 U. S. 111; *North American Company* v. *Securities and Exchange Commission*, 327 U. S. 686; *Mandeville Island Farms* v. *American Sugar Co.*, 334 U. S. 219.

The recent treatment of the subject in the *Mandeville case* (334 U. S. at 229-235) proves that the Court does not continue to read into the Sherman Act the "direct-indirect" formula which it has rejected as constitutional doctrine. Certainly the Sherman Act, as much as the commerce clause itself, is concerned with economic realities and should not be given an artificially restrictive construction. For this reason, cases under the National Labor Relations Act holding that precisely the same type of restraining effect upon commerce is subject to the power of Congress under the commerce clause are pertinent here. *National Labor Relations Act* v. *Jones & Laughlin*, 301 U. S. 1; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601.

Here there can be no question that appellees' plan threatened to halt, if their terms were not met, the interstate shipments of the products of an important industry into and out of Massachusetts. The fact that this interruption would first interfere with manufacturing activities in Massachusetts, and that this interruption of manufacture would bring about the cessation of interstate commerce cannot blind the courts to the fact

that the conspiracy itself is unquestionably responsible for a substantial threat to interstate commerce. And the same is true of the effect of appellees' program upon the prices of the finished products and upon competition in the interstate market. See pp. 20-21, *supra*.

Inasmuch as the effects upon interstate commerce are substantial and obvious, it is immaterial that appellees' motivation may have been only to interfere with the manufacture of sportswear in Massachusetts. For it has long been established that under the Sherman Act a specific intention to restrain interstate commerce is not essential, and that "the conspirators must be held to have intended the necessary and direct consequences of their acts * * *, * * * by purposely engaging in a conspiracy which necessarily and directly produces the result which the statute is designed to prevent, they are, in legal contemplation, chargeable with intending that result. *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 243; *United States* v. *Reading Co.*, 226 U. S. 324, 370." *United States* v. *Patten*, 226 U. S. 525, 543. See also *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 511; *United States* v. *Frankfort Distilleries*, 324 U. S. 293; *Local 167* v. *United States*, 291 U. S. 293.

Nor is it material that the conspiracy may not have substantially affected the entire national market, "so long as control is exercised effectively in the area concerned". *Mandeville Farms* case,

334 U. S., at 236; *United States* v. *Yellow Cab Co.*, 332 U. S. 218, 225; *Indiana Farmer's Guide* v. *Prairie Farmer*, 293 U. S. 268, 279. Here the interference was with the fifth largest manufacturing center in the United States; the business of the jobbers who signed the agreement was about $8,800,000 (R. 29). Interference with any such volume of commerce is unquestionably sufficient to violate the Sherman Act.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the district court should be reversed.

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SEPTEMBER, 1948.

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Reply Brief for the U.S.

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No. 37

In the Supreme Court of the United States

OCTOBER TERM, 1948

THE UNITED STATES OF AMERICA, APPELLANT

v.

WOMEN'S SPORTSWEAR MANUFACTURERS ASSOCIATION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

REPLY BRIEF FOR THE UNITED STATES

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REPLY BRIEF FOR THE UNITED STATES

I

THE RESTRAINT WAS DESIGNED TO ELIMINATE COMPETITION AMONG BUSINESSMEN, AND NOT MERELY TO MAINTAIN LABOR STANDARDS

In the brief which we received February 21, 1949, as a substitute for the brief filed October 1, 1948, respondents argue that the contract here involved is in substance a labor agreement, solely directed to the maintenance of labor standards, and therefore exempt from the Sherman Act under the doctrine of the *Apex* case. In view of the points advanced for the first time in the new brief,[1] it seems desirable to call the Court's

[1] No such argument was advanced in the brief originally filed by respondents.

attention in more detail than in our main brief to the facts of record which refute the argument.

Respondents do not go quite so far as to describe their association as a labor organization; the title "Women's Sportswear Manufacturers Association" would make that too difficult. But they do contend that when the District Court found that "One of the purposes of the Association was to maintain the standard of prices charged to jobbers for doing the stitching operations on the sportswear garments in the Boston area" (R. 32), it was really speaking only of "labor costs", and that the "sole purpose" of the agreement was to maintain labor standards (Respondents' Brief, p. 30).

I. In the first place, the amounts paid to contractors by the jobbers were not mere "labor costs". It is probably true that the largest part of the contractors' expenses are for labor. But the trial court found that "The defendant contractors have shops or factories in the Boston area, where they have installed sewing machines" (R. 29). And the "price" which the contractors received did not merely cover labor costs, but was an over-all amount out of which the contractors were required to pay for their machinery and equipment, for the space in which the shop or factory was located, and for overhead. The difference between these costs and the "price" was the contractor's profit.

The contract first proposed referred to "the price agreed to be paid for the *manufacture* of garment or garments by the contractor" (R. 209).[2]

Clearly the word "price" as used in the industry and by the court below—and, indeed, repeatedly in the very contracts here involved (R. 208–209, 211)—accurately describes the amount paid by the jobbers to the contractors as independent businessmen, and not merely an amount paid for labor costs. The contractors were clearly independent manufacturers, as the names both of their Association and of their individual firms show.[3] And since their income is derived from profits, they have the same incentive as other businessmen to increase profits by eliminating competition.

2. The record also proves that the maintenance of labor standards was not the sole purpose of the agreement, and suggests that it may not have been the purpose at all.

The agreements proposed by respondents did not require the jobbers to deal only with contractors complying with certain minimum labor standards, or even with the standards prescribed by the I. L. G. W. U., or with contractors who were under contract with the Union. But they

[2] All italics in this brief are supplied.

[3] For the firm names see R. 2–4. Illustrative are Kay's Sportswear, Inc., Fisher Garment Company, Century Manufacturing Co., Bell Sportswear Mfg. Co.

did require jobbers to deal only with members of the contractors' Association.

The agreement first proposed by the contractors (Exhibit 3; R. 207–210), did not refer to the union (except in relation to its "Health and Vacation fund"). (Paragraph 7, R. 209–210)). It provided merely that jobbers should employ only contractors who were members of the Association. After the jobbers objected to this agreement as in violation of the antitrust laws (R. 30, 47–48, 60–62), a new agreement was prepared, with the assistance of counsel (R. 49). This agreement (Exhibit 4, R. 210–213) shows on its face that it was not requiring the jobbers to give their business merely to contractors in contractual relation with the I. L. G. W. U. The jobber was required to "give all his work to *members of the Association* who are in good standing with the I. L. G. W. U." (paragraph 1; R. 211). In other words, a jobber could not give work to a contractor in good standing with the Union if he was not also a member of the Association. The first clause of the paragraph shows that the jobber already had agreed with the union "to employ only contractors who are in contractual relationship with said I. L. G. W. U." That there were such contractors outside of the Association appears from the last clause in the same paragraph; the limitation to members of the Association was for "so long as members of the Associa-

tion are available for performance of his work, and are comparable as to price and quality of work with other *Contractors who are in contractual relationship with said I. L. G. W. U. and are not members of the Association.*" (R. 211.)

Apart from the contracts, the testimony referred to in our main brief (pp. 13–14) shows that some contractors not in the Association had agreements with the Union and that some members of the Association did not.[1] And the Union official called as a witness admitted that the Union agreement did not require a jobber "to give his work to contractors who belonged to the Women's Sportswear Manufacturers Association," but only to contractors who employed union labor (R. 184).

It is thus apparent that respondents' plan was designed to protect the contractors against competition from other contractors, inasmuch as the requirement that jobbers deal only with members of the Association, as distinct from contractors having union shops, was not necessary to protect labor.

Respondents would be in no better position even if it be assumed that *one* of the purposes of the plan was to maintain labor standards—and that is the most that they can urge. That also was true in *Allen Bradley Co.* v. *Local Union No. 3*, 325 U. S. 797. A purpose of the combination there involved, and undoubtedly the prin-

[1] This has not been denied in respondents' brief.

cipal purpose of the labor organization which initiated the program and which was the defendant in the case, was to improve the working standards of the employees, "to further their own interests as wage earners." (*Id.* at 801, 798). But since the combination of businessmen and union *also* intended to exclude outsiders from the market, even the union was held to have violated the Sherman Act. In this case the businessmen, the contractors, certainly intended to exclude others from competing against them, whether or not they also had a purpose to protect labor standards. Thus our argument (Main Br. p. 18) that union participation would not immunize the contractors was clearly correct under the *Allen Bradley* case, despite respondents' labelling of the point as "fantastic." (Resp. Br. p. 31). The case differs from *Allen Bradley* in that, although the union here seems to have been interested, it did not participate in the plan; and also because the history of the plan and its terms reveal that the alleged labor motivation was largely protective coloration for what the contractors were seeking to do.

3. Respondents have referred to the recommendations of the Advisory Commission appointed by Governor Smith in 1924 to investigate the Cloak, Suit and Skirt industry in New York (Resp. Br. pp. 33–34). The excerpt quoted by respondents show that that Commission recommended that "every jobber shall, in accordance with a stand-

ard to be agreed upon between the parties, select and designate the submanufacturers he needs to handle his production, leaving him the necessary freedom in securing samples and in changing submanufacturers for cause shown." But that is not what we have here. In this case the contractors in combination require the jobbers to deal exclusively with members of the contractors' Association; the individual jobber is not given the right to "select and designate" the contractors he needs, except within the Association. Whether the program recommended for the New York industry would violate the Sherman Act might depend on how it would operate in practice; in any event, no question as to that is presented here.

II

THE GOVERNMENT'S POSITION AS TO THE EXISTENCE OF A BOYCOTT

Note should be made of respondents' reiteration (Br. p. 8, 35) that the Government has abandoned its contention that appellees did not engage in a boycott. For this respondents rely on the statement in the Government's main brief (p. 4) that the Government "accepts" the trial court's finding of fact.

The trial court's findings first set forth the facts in some detail, including findings that the contractors stopped work for certain jobbers because the jobbers refused to sign the proposed agreement requiring them to deal exclusively

with members of the Association (R. 30–31). This was a boycott. *Fashion Guild* v. *Federal Trade Commission*, 312 U. S. 457. The last sentence in the section of the trial court's opinion designated as "Findings of Fact" stated that "none of the defendants attempted * * * to boycott any concern or interfere with the manufacture or sale of its goods outside of Massachusetts" (R. 32). This was a general conclusion, to which the Government formally assigned error (R. 224, Asgt. 7). In other portions of our brief we accurately refer to respondents' scheme as a "boycott." We did not intend our general acceptance of the findings to waive this assignment, particularly when the general conclusory finding is inconsistent with the prior specific finding.

The important matter, of course, is what respondent actually did, not the court's characterization of it, or even whether it falls within the loose term "boycott." And, whatever it be called, the refusal or threatened refusal to permit the jobbers to deal with non-members of the Association, and the agreement to that effect, violate the Sherman Act.

III

WITH RESPECT TO RESTRAINTS UPON COMMERCIAL COMPETITION THE SHERMAN ACT IS CO-EXTENSIVE WITH THE COMMERCE POWER

In our main brief, we have argued both that the types of effect on interstate commerce shown in this case have often been held to be restraints

within the meaning of the Sherman Act (pp. 20–24, 27–28), and that with reference to the types of restraint at which the Act was directed Congress exercised all the power it possessed under the Commerce Clause (pp. 19–20, 24–27). Respondents continue to insist, however, that even as to the types of commercial trade restraints covered by the Act, "Congress did not exercise all its power with respect to the Sherman Act" (Resp. Br. 21), and that the Labor Board cases are therefore inapposite.

To prove the contrary, our main brief quoted from the *Apex* case, upon which respondents primarily rely, and from *United States* v. *Frankfort Distilleries*, 324 U. S. 293, 298. See main brief, pp. 20, 25. In view of respondents' refusal to accept these opinions as authoritative on this proposition, we wish to go back to original sources and call to the Court's attention the various statements at the time the Sherman Act was before Congress which demonstrate that Congress intended the Act to reach all commercial restraints which it was possible to prohibit under the commerce power.

Senator Sherman, in explaining his original bill on March 21, 1890,[5] declared that its purpose was (21 Cong. Rec. 2457):

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[5] The bill finally passed was not Senator Sherman's but one largely drafted by Senator Edmunds, and explained to the Senate and House by him and by Representative Culberson, respectively, who are quoted in the text. (See *Apex Hosiery*

> to arm the Federal courts *within the limits of their constitutional power*[6] that they may co-operate with the State courts in checking, curbing, and controlling the most dangerous combinations that now threaten the business, property, and trade of the people of the United States. * * *

On April 8, after the Senate Judiciary Committee had submitted the bill in substantially its present form, Senator George, who was one of its draftsmen,[7] stated (21 Cong. Rec. 3147):

> The Bill has been very ingeniously and properly drawn to *cover every case which comes within what is called the commercial power of Congress.*

Representative Culberson, who was in charge of the bill in the House, stated on May 1, 1890 (21 Cong. Rec. 4091):

> Now, it is suggested that Congress ought to go further. It is very difficult to say how it could do so. *It occupies now in this bill, or attempts to occupy, the sphere allotted to it in the regulation of commerce between the States.* * * *

On June 11, the House Conferees submitted a report in which they stated (21 Cong. Rec. 5950):

Co. v. *Leader*, 310 U. S. 469, 489, and authorities cited.) But although the original bill differed greatly from that finally passed, there was no difference in ultimate objectives or in the intention to use all of the constitutional power available.

[6] All italics herein are supplied.

[7] See Edmunds, *The Interstate Trust and Commerce Act of 1890*, 194 North American Review 801, 802 (1911).

> In the original bill [which was the one finally passed] two things were declared illegal: Contracts in restraint of interstate trade or commerce, and the monopolization of such trade.
>
> Its only object was the control of trusts, so called, *so far as such combinations in their relation to interstate trade are within reach of Federal legislation.*

On June 16, in discussing an amendment (which did not pass) proposed by the House, Senator Edmunds, who had reported the final bill out of the Judiciary Committee, stated (21 Cong. Rec. 6116):

> I think myself that this amendment of the House was wholly unnecessary, but the original bill as it passed the Senate *was adequate to cover every case over which Congress had power,* and broad enough to include every case of wrongdoing of any kind of that nature. * * *

On June 20, 1890, on the occasion of the final conference report to the House immediately prior to the passage of the present act, Representative Kerr of Iowa stated (21 Cong. Rec. 6313):[8]

> When this bill was before the House recently the gentleman from Texas [Mr. Culberson], in discussing its provisions, made the statement that the *power given in this bill was an exercise of the entire power of the General Government over the*

[8] See also the statement of Representative Enloe on the same page.

> *subject* of trusts, and that its provisions presented the matter in a shape to obtain the decisions of the courts, out of which we might gather the full extent of the power of the Government on that subject. * * *
>
> * * * * * *
>
> *My opinion is that it will be the exercise of the entire power of the Government over the subject*, except insofar as it applies to the Territories and the District of Columbia.

On the same day, the last speech on the floor of the House, immediately preceding the unanimous adoption of the bill by the House, was made by Representative Stewart, of Vermont. He said (21 Cong. Rec. 6314):

> *are just as broad, sweeping, and explicit* * * * *The provisions of this trust bill, as the English language can make them to express the power of Congress over this subject under the Constitution of the United States.* * * *

In *United States* v. *South-Eastern Underwriters Association*, 322 U. S. 533, 558–559, this Court referred to some of the above passages, and concluded:

> That Congress wanted to go to the utmost extent of its Constitutional power in restraining trust and monopoly agreements such as the indictment here charges admits of little, if any, doubt. The purpose was to use that power to make of ours, so far

as Congress could under our dual system, a competitive business economy.

See also *Mandeville Farms, Inc.* v. *American Crystal Sugar Co.*, 334 U. S. 219.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1948

THE UNITED STATES OF AMERICA, APPELLANT

v.

WOMEN'S SPORTSWEAR MANUFACTURERS ASSOCIATION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

BRIEF IN BEHALF OF APPELLEES

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In the Supreme Court of the United States

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THE UNITED STATES OF AMERICA, APPELLANT

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WOMEN'S SPORTSWEAR MANUFACTURERS ASSOCIATION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

BRIEF IN BEHALF OF APPELLEES

OPINION BELOW

The opinion of the District Court for the District of Massachusetts (R. 26-35) is reported in 75 F.Supp. 112.

STATEMENT OF THE CASE

This is a complaint filed by the United States under Section 4 of the Sherman Anti-Trust Act (15 U.S.C. 4) against the Women's Sportswear Manufacturers Association, its Executive Director, and its members, to prevent alleged violations by them, jointly and severally, of Section 1 of the Act (15 U.S.C. 1). After many allegations intended to establish the nature of the interstate commerce involved, the complaint sets forth the alleged offences charged (paragraphs 24, 25, R. 5, 6) and the effect of the alleged conspiracy (paragraph 26, R. 6). The case was heard in the District Court by Healey, D. J., who filed a memorandum of opinion containing findings of fact and a discussion of the law and

ordered judgment for the appellees (R. 26-35). The case is here on the Government's appeal.

The facts of the case. The Government accepts all the findings of fact made by the District Court. (Govt.'s brief, p. 4). So do the appellees,—and appellees in discussing the questions involved will confine themselves strictly to the facts as found. They can be summarized as follows:—

The appellees are persons, firms and corporations, called contractors, engaged in the business of stitching garments known as sportswear for jobbers located in the Boston Area. All of the appellees are located in and about Boston within the Commonwealth of Massachusetts. The jobbers for whom the contractors do this work are engaged in intrastate and interstate commerce, the latter amounting to at least 80% of the entire output. The garments at all times are the property of the jobbers, and the entire transaction between the jobber and his contractor takes place within the limits of the Commonwealth of Massachusetts. The cost of stitching the garment is approximately 25% of the sales price of the garment.

Beginning with March 1, 1944 the contractors' association attempted to make an agreement with the jobbers regarding the conditions under which the contractors would work for the jobbers. A proposed agreement (Plf's Ex. 3, R. 207, R. 45) was rejected by the jobbers who alleged it was illegal (R. 30). Work stoppages occurred in some of the shops of contractors working for some of the jobbers: the District Court found on conflicting testimony that the stoppages were ordered by the Association because the jobbers involved refused to sign the proposed agreement (Plf's Ex. 3, R. 31).

After work was resumed, further negotiations took place between the jobbers and appellees, and a new agreement

was drawn up between the parties and signed on October 17, 1944 (Plf's Ex. 4, R. 210, R. 49, R. 31). This agreement (Ex. 4) is substantially different from the proposed agreement (Ex. 3) which was rejected by the jobbers. After reciting the reasons for the execution of the agreement, namely, that both jobbers and contractors were in contractual relation with the Union (I.L.G.W.U.) (which furnished the workers) as to certain labor standards, rates of pay and other obligations to the workers, that the parties desired to expand and develop the Boston market, to establish fair and equitable dealings, to minimize industrial disputes, conflicts and difficulties, to remove present abuses and evils which cause such disputes, and to provide an inexpensive method of settling such disputes, the agreement provided that "the jobber should give all of his work to Association contractors available for performance of his work, provided such contractor was comparable as to price and quality of work with non-member contractors, but if a member withdrew from the Association, he could finish the jobber's work already in hand; or, if any non-member contractor was, at the time of the signing of the Association's agreement, employed by a jobber under contract, the jobber could continue to employ such contractor, even if he did not become an Association member. The jobber was required to distribute his work equitably among Association contractors engaged by him and to furnish the contractor with a written order setting out the price, and was forbidden to receive secret rebates from the contractor. The jobber was required to deduct from the amount due the contractor, a sum computed by the defendant Association to cover unemployment compensation, insurance and the health and vacation fund of the contractors' employees. Compulsory arbitration of disputes between jobber and contractor was

provided for, as were the mechanics for arbitration. All individual agreements between jobber and contractor were made subject to the provisions of this agreement. Other provisions required the Association to assist the jobber in getting sufficient contractors to do his work. The contractor agreed to complete all orders given him with due regard to the delivery dates set forth in the orders; and both the contractors and jobbers agreed that there should be no pirating of styles, and that styles submitted to a contractor by a jobber would not be submitted by the contractor to any other jobber." (R. 31)

The District Court found further that the agreement was still in force at the time the complaint was filed, but there was little, if any evidence as to just how the arrangement worked out (R. 32). It found that one of the purposes of the Association was to maintain the standard of prices charged the jobbers for doing the stitching operations on the sportswear garments in the Boston area (R. 32).

The District Court expressly found that none of the appellees performed any work outside of Massachusetts or received from or shipped to any jobber or anyone any goods outside of Massachusetts. Nor did they attempt to fix the wholesale or retail prices of women's sportswear or to boycott any concern or interfere with the manufacture or sale of its goods outside of Massachusetts (R. 32).

The Court made no findings of fact in regard to the number of jobbers who performed some or all of the stitchwork themselves (Govt's brief p. 5), or that the proposed agreement (Plf's Ex. 3) did not differ materially from the agreement subsequently executed (Plf's Ex. 4), or that it was in violation of the anti-trust laws. (The Court stated the jobbers said the proposed agreement was illegal) (R. 30). Nor did the Court find as fact that there was substantial

uniformity in prices charged by the contractors[1] (Govt's brief, p. 10), nor what was the nature of the discussions, which took place at meetings of the Association as to prices received by the contractors (Govt's brief, p. 10), nor what was the true situation or meaning of the testimony quoted by the Government in its brief (p. 10), much of which is torn from its context or at variance with other testimony of the same witness.[2]

It is idle, too, to enter into a discussion as to what is the true meaning of the various extracts of the minutes of the Association (Govt's brief, p. 10). There is no evidence of what action, if any, was taken, and the District Court made no finding in regard thereto.

Contrary to what the Government urges in its brief (p. 11) as to the "attempted Labor Union Orientation of the Agreement", there is a real basis for the statement in the preamble of the agreement executed between the jobbers and appellees (Ex. 4), in that practically all of the jobbers and contractors in the Boston Area were in contractual relations with the Union; and there is no evidence that any of the appellees employed non-union workers, regardless of whether or not the contractors had a contract with the Union. And though the District Court found as a fact that there was no evidence that the Union participated in drawing up the proposed agreement between the jobbers and contractors (R. 31), it is very evident that Philip Kramer, the Manager of the Local Union, was very much interested

[1] The witness testified that prior to the signing of the agreement there was no difference in prices charged by the contractors and that since the signing of the agreement (Plf's Ex. 4) there was no difference (R 147).

[2] Compare the testimony of the witness Henry Webber as quoted above "whether some is working for less than the other". (R 95) with his testimony on cross-examination to the effect that except for the general talk about prices, no action was taken about prices at any of the meetings, that witness was never told what prices he should charge, and the Association never interferred with him as to what prices he should charge his jobber (R 97).

in having both the jobbers and contractors form a tripartite agreement with the Union (R. 170), and many of the terms of the agreement (Ex. 4) as executed between the jobbers and contractors were based on the terms of the agreement between the Union and the jobbers (R. 177 ff).

From its findings of fact the District Court concluded that "there is no evidence of any intent on the part of the defendants, who had no direct and immediate connection with or control over interstate commerce, to burden interstate commerce. There is no evidence of any direct and immediate restraint upon interstate commerce resulting from the defendants' activities, from which an illegal intent can be inferred. They did not seek to monopolize the supply of sportswear garments, or to control its price, or to discriminate between would-be purchasers. Their activities were purely local and directly affected only the manufacture of women's sportswear in Massachusetts. The effect of their activities on interstate commerce was indirect and too remote to bring them within the condemnation of Section 1 of the Sherman Act", and concluded that "none of the defendants committed any violation of the Sherman Act as alleged in the complaint", and ordered judgment for the defendants (R. 35).

In connection with its appeal the Government filed its assignment of errors (R. 224) but evidently now is relying only upon its first and second assignment of errors. (Govt's brief p. 15).

Questions Presented

The questions raised by this record are

(1.) Are the activities of appellees part of interstate trade or commerce, and subject to the Sherman Act,

(2.) Does the agreement of October 17, 1944 between the

jobbers and the appellees constitute an unreasonable restraint upon the jobbers in violation of Section 1 of the Sherman Act?

Summary of Argument

Appellees contend that they are not at all engaged in trade or commerce as comprehended by the Sherman Act, in that their activities form no part of a stream of interstate commerce, that all of appellees' activities are performed wholly within the limits of Massachusetts and so do not constitute interstate activities.

The most that can be said about appellees' activities is that the appellees are engaged in production for trade or commerce, and where the production is purely intrastate, acts done to restrain production are not in violation of the Sherman Act.

The case of *Mandeville Island Farms, Inc. et al.* v. *American Crystal Sugar Co.*, 334 U.S. 219, which was decided on its own peculiar facts, is not in conflict with the foregoing statement.

The agreement of October 17, 1944 (Ex. 4) did not constitute an unreasonable restraint upon the interstate activities of the jobbers. The agreement is a means of policing an industry, an attempt at self-regulation to eliminate evils therein and does not have as its purpose an intent to control prices or limit production or to restrain competition. Any effect on interstate trade is purely incidental and does not constitute an unreasonable restraint forbidden by the Sherman Act. Cases decided by this Court on matters arising under the Fair Labor Standards Act (29 U.S.C. 201) or National Labor Relations Act (29 U.S.C. 151) wherein intrastate activities were held within the purview of those Acts because such activities "affected" interstate commerce are

not in point. There is a wide difference in legal interpretation between the words "affect" and "restrain".

The findings of fact show that defendants did not directly, inevitably and substantially affect the interstate commerce of the jobbers. Absent the findings of fact is the existence of any conspiracy on the part of the appellees to restrain interstate commerce, or any intention on the part of the appellees to restrain the interstate commerce of the jobbers by price fixing, boycotts, or eliminating competition.

Argument

Reduced to its basic element, the Government's brief is a plea to this Court to declare that if two or more persons co-operate with each other to make an agreement with a third person which in any way relates to the interstate trade or commerce of said third person, the said two or more persons are violating the Sherman Act, regardless of what is the extent of the subject matter of said agreement and regardless of whether or not the said two or more persons operate in one or more states. The Government earnestly pleads with this Court to drop all distinctions which it has formerly made between the Sherman Act and the Fair Labor Standards Act or the National Labor Relations Act as to the scope of interstate commerce involved, and to disregard all distinctions between the words "restrain" and "affect". It also urges this Court to forget all state lines and to extend the doctrine of causal relationship of goods shipped in interstate commerce to all the ingredients, services, and acts which in any degree contributed to the final transaction in interstate commerce, and to declare agreements between two or more persons on one side with any number of persons on the other side violations of the Sherman Act regardless of evidence of actual restraint

or intention to restrain interstate commerce. To do this, the Government conjures up the stream of commerce theory. This, the Government contends, is the meaning of the Mandeville case (cited supra), a contention with which appellees do not agree.

Before proceeding with its presentation of cases which the appellees contend govern the situation disclosed by the record in this case, it may be advisable to discuss the Mandeville case upon which the Government lays so much stress. In the first instance, it must be noted that the Mandeville case came up on an appeal from a judgment dismissing the complaint on the ground that the amended complaint was insufficient to state a cause of action. The decision of this Court is to the effect that assuming plaintiff proves all the facts alleged, a sufficient cause of action is stated. As the Court says:

> "The main question is whether, in the circumstances pleaded, California sugar refiners who sell sugar in interstate commerce may agree among themselves to pay a uniform price for sugar beets grown in California without incurring liability to the local beet growers under the Act. Narrowly the question is whether the refiners' agreement together with the allegations made concerning its effects shows a conspiracy to monopolize and to restrain interstate trade and commerce or one thus affecting only purely local trade and commerce." (334 U.S. 219, 221)

Then follows a statement of the allegations and of its effects which coupled with the refiners' agreement show the "peculiarly integrated character of the industry, effects of the arrangements upon interstate commerce, and the relation

between the violations charged and the injuries suffered by petitioners" (334 U.S. 219, 224). Further, the amended complaint charged that respondent had unlawfully conspired with . . . refiners to "monopolize and restrain trade and commerce . . . and to *unlawfully fix prices to be paid growers*" (italics supplied) and that each refiner no longer competed against the others as to the price to be paid the growers, but paid the same price on the agreed uniform basis of average net returns. (334 U.S. 219, 225). It was also alleged that as a result of the alleged conspiracy respondent did not operate as efficiently as before, that respondent received less in sales returns than previously and incurred greater expenses than if competition had been free, and petitioners did not receive the reasonable value of their sugar beets; that as a direct, expected and planned result of said conspiracy, the free and natural flow of commerce in interstate trade was intentionally hindered and obstructed, that the refiners became illegally associated in a common plan wherein they pooled their receipts and expenses and frustrated the free enterprise system (334 U.S. 219, 226).

Compare these allegations with the facts found by the District Court in the case at bar. In the Mandeville case the defendant was admittedly engaged in interstate activities; in this case the defendants are found not to be engaged in interstate activities (R. 32, 33). In the Mandeville case, the conspiracy was directed to fixing the prices to be paid the growers of the sugar beets; in this case none of the appellees attempted to fix wholesale or retail prices of women's sportswear (R. 32, 33). In the Mandeville case there was a direct allegation of unreasonable restraint of interstate commerce; in this case there is no finding that the appellees' acts had any effect on interstate commerce.

either as to volume or price or competition between the jobbers locally or with the jobbers operating in the other market centers. In the Mandeville case there was also a direct allegation that interstate commerce was intentionally hindered and obstructed; in this case, the District Court stated "there is no direct evidence that these defendants had any intention of restraining interstate commerce in cloth or in the finished sportswear garments." (R. 33). The District Court further stated there was no basis upon which to predicate an inference of illegal intent (R. 33).

The Court in the Mandeville case took the position that the test whether or not activities occuring wholly within the limits of one state came within the purview of the Sherman Act depended not on a geographical basis but upon a realistic appraisal of the effect of such activities upon interstate commerce.

However, it is not enough to show that the activity is a step in the total process which leads up to the shipment in interstate commerce; and to say that because stitching a garment is a necessary step in the production of the garment which may ultimately find its way into interstate commerce is not enough upon which to base the right of the Government to seek injunctive relief under Section 4 of the Sherman Act.

To quote again from the Mandeville case:

> "In view of this evolution, the inquiry whether the restraint occurs in one phase or another, interstate or intrastate, of the total economic process is now merely a preliminary step, except for those situations in which no aspect of or substantial effect upon interstate commerce can be found in the sum of the facts pre-

sented." For, given a restraint of the type forbidden by the Act, though arising in the course of intrastate or local activities, and a showing of actual or threatened effect upon interstate commerce, the vital question becomes whether the effect is sufficiently substantial and adverse to Congress' paramount policy declared in the Act's terms to constitute a forbidden consequence. If so, the restraint must fall, and the injuries it inflicts upon others became remediable under the Act's prescribed methods, including the treble damage provision." (334 U.S. 219, 234)

And in the footnote to the passage just quoted the Court referred to its former holding in *United States* v. *Frankfort Distilleries*, 324 U.S. 293, 297, as follows:

> "It is true that this Court has on occasion determined that local conduct could be insulated from the operation of the Anti-Trust laws on the basis of the purely local aims of a combination, insofar as those aims were not motivated by the purpose of restraining commerce, and where the means used to achieve the purpose did not directly touch upon interstate commerce."

Again quoting from the Frankfort Distilleries case, "there is an obvious distinction to be drawn between a course of conduct wholly within a state and conduct which is an inseparable element of a larger program dependent for its success upon activity which affects commerce between the States". 324 U.S. 293, 297.

The conduct or activities of the appellees can in no way be considered "an inseparable element of a larger program

dependent for its success upon activity which affects commerce between the States," inasmuch as appellees only do at least 50% of all the stitching of women's sportswear in the Boston area (R. 29) and only 65% of all women's-sportswear produced in Boston is handled by the appellees, of which 80% is sold to purchasers outside of Massachusetts (R. 29). Boston is only the fifth largest manufacturing center of such sportswear and its production is sold in competition with like goods manufactured in other areas (R. 29). Unlike the Mandeville case, the District Court was not dealing with an industry tightly interwoven through all its intermediate stages to and including interstate sale, in the middle of which processes and dominating all of them stood the appellees. On the contrary, there was no evidence of price fixing or of any change in prices or lack of competition between contractors as a result of the organization of the contractors' Association or the signing of the agreement between the Association and the jobbers (Pltf's Ex. 4).

On the facts alleged in the Mandeville case, the refiners acquired not only a monopoly of the raw material but also, and thereby, control of the quantity of sugar manufactured, sold and shipped interstate from the Northern California producing area. There is no finding of monopoly or control of women's sportswear in the case at bar. To apply the doctrine of the Mandeville case to the one at bar is to ignore the facts of industrial life.

Appellees are not engaged in interstate trade or commerce. Taking up again the thread of appellees' argument, the appellees contend that they are not engaged in interstate trade or commerce. Their activities consist solely of stitching garments which belong to the jobbers, and which have been cut by the jobbers from cloth belonging

to them. The Government invokes the theory of the stream of interstate commerce and paints a picture of cloth moving from mills outside of Massachusetts and ending up in garments shipped from Massachusetts to points outside. The trouble with the picture is that there is no such stream. When the cloth arrives from the mills outside the State at the jobbers' place of business, its interstate journey is then at an end. The cloth is no longer in interstate commerce; every taxing authority will take that position and this Court will sustain the taxing authority's position.

Hoover & Allison Co. v. *Evatt*, 324 U.S. 652, 666.
F. May & Co. v. *New Orleans*, 178 U.S. 496.

It matters little how long the cloth thereafter remains in the jobbers' place of business, because the cloth is thereafter transformed into garments, being cut, stitched, lined and fitted with buttons and other ornaments. A substantial change has taken place in the form and character of the original cloth, and a substantial addition has been made thereto. And it is after this substantial change has been made that the finished garment may begin a new trip in interstate commerce.

The activities of the appellees lie between the end of one journey and the beginning of a new journey in interstate commerce, and so much has happened in between that it cannot be said that the second journey is the continuation of the first one.

These intrastate activities of the appellees are no part of interstate trade or commerce; the most that can be said of these appellees is that they are engaged in production for trade or commerce.

Where the production is purely intrastate, as is the case

here, acts done by the appellees to restrain production are not in violation of the Sherman Act.

United Mine Workers v. *Coronado Coal Co.*, 259 U.S. 344
U.S. v. *National Assn. of Window Glass Mfrs.*, 287 F. 228

Where the appellees are not directly engaged in interstate commerce, their activities intrastate are not subject to the Sherman Act unless it is shown that their activities are intended to restrain interstate trade or commerce by fixing prices and/or eliminating competition to the damage of the ultimate consumer.

Apex Hosiery Co. v. *Leader*, 310 U.S. 469
Chicago Board of Trade v. *U.S.*, 246 U.S. 231
Appalachian Coals v. *U.S.*, 288 U.S. 344

And in the absence of any proof of such intention, it must be shown that the activities complained of must directly, inevitably and substantially affect interstate trade or commerce.

Anderson v. *U. S.*, 171 U.S. 604
Standard Oil Co. v. *U. S.*, 221 U.S. 1
Appalachian Coals v. *U.S.*, 288 U.S. 344

The Agreement as Executed Does Not Restrain Interstate Trade or Commerce within the Meaning of the Sherman Act

In its brief the Government argues "Appellees' plan was designed to *interfere* with the business of the jobbers . . . (italics supplied). In concertedly refusing to work for any jobber who would not deal with them exclusively, appellees

threatened to destroy the jobbers' entire business and thus to halt both the outgoing shipments of sportswear and incoming shipments of cloth." (Govt's brief p. 15). This statement is arrant nonsense and is directly in contradiction with the finding of the District Court that "None of the defendants attempted to fix wholesale or retail prices of women's sportswear or *to boycott any concern or interfere with the manufacture or sale of its goods outside of Massachusetts*" (R. 32) (italics supplied).

The Government's brief further says (p. 16), "In addition a purpose and undoubtedly *an effect of the scheme* was to stabilize prices paid to contractors by jobbers" (italics supplied). The District Court's finding is, "There is little, if any, substantial evidence as to just how the arrangement worked out. One of the purposes of the Association was to maintain the standard of prices charged the jobbers for doing the stitching operations on the sportswear garments in the Boston Area" (R. 32). One can easily see how unwarranted is the Government's statement as to the effect of the scheme. The same criticism can be levelled at the Government's statement in its brief (p. 16) that the "obvious consequences of the plan were to restrain interstate commerce".

Beyond the District Court's statement in its discussion "Unquestionably the prices charged by these contractors for stitching sportswear garments, are reflected in the wholesale and retail prices of the finished garments. Also, any work stoppage on the jobbers' goods would slow down the stream of sportswear entering into interstate commerce and the purchase of cloth from out of state mills, as well as the taking of orders for finished garments in other states," (R. 33)

there is not the slightest scintilla of evidence in the record that any prices of the finished garments were raised or lowered, or any flow of finished garments or cloth from mills diminished or slowed down, as the result of any of the activities of the appellees or as a result of the execution of the agreement.

The entire Government's argument as outlined in its brief on pages 17 and 18 is based upon the erroneous assumption that the appellees were guilty of "an actual and threatened boycott against jobbers who refused to deal with them exclusively, *have* required that work be allocated 'equitably'—and therefore not on a competitive basis—among the contractors engaged by a jobber and *have* acted in a manner designed to maintain price standards and eliminate price competition," (italics suppled)—an assumption that is diametrically opposed to the flat finding of the District Court that none of the appellees have boycotted or interfered with any concern (R. 32). Then follows another erroneous assumption as to the requisite effect upon interstate commerce (Plf's brief p. 17) which is diametrically opposed to the District Court's opinion that "such results do not constitute sufficiently direct and immediate effects upon interstate commerce upon which to predicate an inference of illegal intent" (R. 33).

The vice or flaw in the Government's position is best exemplified by its statement on page 19 of its brief,—"This Court has frequently held that the Sherman Act extends to intrastate activities which *affect or restrain* interstate commerce", thus trying to create the impression and pass along the idea that the words "affect" and "restrain" mean exactly the same thing. And it is in this connection that the Government cites cases like *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1,

and *National Labor Relations Board* v. *Fainblatt*, 306 U.S. 601. While the test applied in Sherman Act cases has been the test applied under the commerce clause of the Constitution itself, and Congress admittedly has broad power to legislate with respect to interstate commerce, the fact of the matter is that Congress did not exercise all its power with respect to the Sherman Act, and legislated to different extents with regard to the Sherman Act, the Fair Labor Standards Act and the National Labor Relations Act. And it is not for this Court to make up the legislative difference.

The United States Circuit Court of Appeals in Pennsylvania fell into this error in the first case of *Leader* v. *Apex Hosiery Company* (90 F.(2) 155) and applied the standards of the Fair Labor Standards Act and National Labor Relations Act as to the scope of the legislation by Congress, but when the case came before it again (*Leader* v. *Apex Hosiery Company*, 108 F.(2) 71) it reversed itself, saying at p. 80, "This Court in its opinion in the previous suit between the same parties (90 F.(2) 155, 159) placed emphasis on the expanded meaning of commerce purportedly created by the National Labor Relations Act (29 U.S.C. 151, 166) and the decision of the Supreme Court in *National Labor Relations Board* v. *Jones and Laughlin Steel Company, National Labor Relations Board* v. *Friedman-Harry Marks Company*. The word 'commerce' under this expanded definition was construed to include the activities of the defendants and their agents. We now conclude that this was unwarranted. Congress used a very broad word 'affect' in the National Labor Relations Act, thus evidencing its intention to embrace the entire field of interstate commerce confided to it by the Constitution. Upon the other hand, in the Sherman Act, Congress employed the word 'restraint' which has a different, and plainly more

restricted connotation. That this is so becomes the obvious in the light of the Supreme Court decision which we have already discussed, in which it is declared that Congress intended to legislate only in respect to unreasonable restraints of commerce. In other words, in order to come within the purview of the Sherman Act and thus to confer jurisdiction upon the Federal Courts, commerce must not only be affected, but must also be restrained and restrained to an unreasonable degree."

Congress has not exercised all its power over interstate commerce with regard to the Sherman Act as a whole. In *U. S.* v. *Frankfort Distilleries* (cited supra) this Court said, at p. 297, "It is true that this Court has on occasion determined that local conduct could be insulated from operations of the Anti-Trust Laws on the basis of the purely local aims of a combination, in so far as these aims were not motivated by the purpose of restraining commerce, and where the means used did not directly touch upon interstate commerce. The cases relied upon by respondents fall within this category. All of them involved the application of Anti-Trust Laws to combinations of businessmen or workers in labor disputes and not to interstate commercial transactions. On the other hand, the *sole ultimate object* of the respondents' combination in the instant case was price fixing or price maintenance. *And with reference to commercial trade restraints such as these*, Congress in passing the Sherman Act left no area of its constitutional power unoccupied: it exercised all the power it possessed. *Apex Hosiery Company* v. *Leader*, 310 U.S. 469, 495." (italics supplied)

The Sherman Act does not condemn every contract, agreement, combination or conspiracy which may in some degree affect or interfere with interstate commerce. *Apex Hosiery*

Company v. *Leader*, 310 U.S. 469, 486. There is still left an area in which an industry can police itself, and combinations may be effected between members of an industry to eradicate evils, provided there is no intentional restraint on interstate commerce, or that the activities do not have such a direct and immediate effect upon interstate commerce that the court is enabled to draw an inference that they were intended to restrain such commerce.

Apex Hosiery Company v. *Leader*, 310 U.S. 469
United Mine Workers v. *Coronado Coal Company*, 263 U.S. 295
United Leather Workers v. *Herkert*, 265 U.S. 475
Industrial Association v. *U. S.*, 268 U.S. 64.

In *Swift & Company* v. *U. S.*, 196 U.S. 375, the court held that the combination also embraced and was directed against commerce in other States. Holmes, J. in that case said that some separate elements of the plan were lawful, but when bound together by an unlawful scheme to monopolize interstate commerce, the whole plan and its parts were unlawful. *The agreement of October 17, 1944 (Exhibit 4) is not an unreasonable restraint of trade or commerce.* All restraints of trade, whether in local or interstate commerce, are not in violation of law, and it is still possible to enter into business agreements which restrict the actions of the parties thereto without running foul of any law. Any concerted action per se is not in violation of the Sherman Act. It depends upon the attendant circumstances.

Appalachian Coals v. *U. S.*, 288 U.S. 344.

The Sherman Act is designed or intended to prohibit unreasonable restrictions upon interstate trade or commerce.

Standard Oil Company v. *U. S.*, 221 U.S. 1.

The evil at which the Sherman Act was aimed was not the policing of the entire field of interstate commerce. "The end sought (by the enactment of the Sherman Act) was the prevention of restraints to free competition in business and commercial transactions which tended to raise prices or otherwise control the market to the detriment of purchasers or consumers of goods and services, all of which had become to be regarded as a special form of public injury."

Apex Hosiery Co. v. *Leader*, 310 U.S. 469, 493

The phrase "restraint of trade" had a well understood meaning at common law, and it was in this sense used in the Sherman Act. "In seeking more effective protection of the public from the growing evils of restraints on the competitive system effected by the concentrated commercial power of 'trusts' and 'combinations' at the close of the nineteenth century, the legislators found ready at their hand the common law concept of illegal restraints of trade or commerce. In enacting the Sherman Law they took over that concept by condemning such restraints wherever they occur in commerce between the states. They extended the condemnation of the statute to restraints effected by any combination in the form of trust or otherwise, or conspiracy, as well as by contract or agreement, having those effects on the competitive system and on purchasers of goods or services which were characteristic of restraints deemed illegal at common law, and they gave both public and private remedies for the injuries flowing from such restrictions."

Apex Hosiery Co. v. *Leader*, 310 U.S. 469, 497, 498

"It must now be accepted as the settled doctrine of this Court that the word "restraint" as used in Section 1 of the Sherman Act, means "unreasonable restraint", and that the definition of the words "unreasonable restraint" means fixing prices or eliminating competition to the damage of the ultimate consumer. A large area is therefore left open to individuals, firms and corporations wherein they can unite in action which puts some restriction upon the activities of persons engaged in interstate commerce but does not have either the actual intention to fix prices or eliminate competition to the damage of the ultimate consumer or, lacking the actual intention to do so, have the inevitable result of so doing.

The activities of the appellees as described by the District Court, even though they might restrict the activities of the jobbers, fall outside the scope of the Sherman Act. Freedom from restraint for the jobbers does not mean unlimited license to conduct their business to the damage or detriment of their contractors, to engage in shady devices, to get secret rebates, or to force down prices which the contractors must receive to pay a living wage to their workers, or to break down all the improvements in the lot of the working man which the union has succeeded in establishing by means of health and vacation payments.

Many evils can crop up in the conduct of a business which are not encompassed in a scheme to raise prices or to eliminate competition, the elimination of which evils by agreement has an indirect and insignificant effect upon prices or volume. In the absence of an intention directly to control prices or eliminate competition, or to follow a course of conduct, the natural and inevitable result of which is to

control prices or eliminate competition, from which such an intent can be inferred, the whole realm of agreement or concerted action lies outside the scope of the Sherman Act.

This Court held in *Appalachian Coals* v. *U.S.* (288 U.S. 344, 373) "A cooperative enterprise, otherwise free from objection, which carries with it no monopolistic menace, is not to be condemned as an undue restraint merely because it may effect a change in market conditions, where the change would be in mitigation of recognized evils and would not impair, but rather foster, fair competitive opportunities. . . . The fact that the correction of abuses may tend to stabilize a business, or to produce fairer price levels, does not mean that the abuses should go uncorrected or that cooperative endeavor to correct them necessarily constitutes an unreasonable restraint of trade."

To the same effect is the case of *Chicago Board of Trade* v. *U. S.*, 246 U.S. 231. In that case it was held that the bald proposition, that a rule or agreement by which men occupying positions of strength in any branch of trade, fixed prices at which they would buy or sell during an important part of the business day, is an illegal restraint of trade under the Anti Trust Law cannot be determined by so simple a test as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. There can be no doubt as to the category in which the case at bar falls. The findings of the District Court settle that question. The agreement of October 17, 1944, and the activities of the appellees were not intended to and did not in fact suppress or destroy competition.

Conclusion

It is evident from the record in this case that appellees are not engaged in activities which unreasonably restrain interstate trade or commerce, nor have they entered into any agreement or conspiracy so to do. The decree of the District Court dismissing the complaint should, therefore, be affirmed.

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